

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

CITY OF PHILADELPHIA . Case No. 2:17-cv-03894-MMB
 .
Plaintiff, .
 . U.S. Courthouse
v. . 601 Market Street
 . Philadelphia, PA 19106
JEFERSON BEAUREGARD .
SESSIONS, III, Attorney .
General of the United .
States, .
 .
Defendants. .
 . October 26, 2017
 . 9:15 a.m.
.

TRANSCRIPT OF EVIDENTIARY HEARING
BEFORE HONORABLE MICHAEL M. BAYLSON
UNITED STATES DISTRICT JUDGE

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PROCEEDINGS

(Call to the Order of the Court)

(Proceedings commence at 9:15 a.m.)

DEPUTY CLERK: All rise.

THE COURT: Good morning, everyone. Please be seated.

ALL: Good morning.

THE COURT: All right. We're here for an evidentiary hearing in the City of Philadelphia versus Attorney General Sessions, civil action 17-3894. Present for the plaintiff is Mr. Tulante, the City Solicitor.

MR. TULANTE: Good morning, Your Honor.

THE COURT: With him is, let me see, Marcel Pratt; is that correct?

MR. PRATT: Yes, Your Honor.

THE COURT: Hi. And in between you is --

MS. AHUJA: Jasmeet Ahuja, Your Honor.

THE COURT: All right. Good morning. How are you? Okay. And for the defendant is Mr. Garg from Washington, DC.

MR. GARG: Good morning, Your Honor.

THE COURT: Good morning. And with you is --

MR. FILENGI: August Filengi (phonetic throughout), Justice Department.

THE COURT: Okay. Thank you. Okay. We had requested and received indication of what witnesses were going to be called today. Today is exclusively for an evidentiary hearing

Plaintiff's Opening Statement

1 for -- in connection with the City's motion for a preliminary
2 injunction and I received a list of names. Would counsel like
3 to make a short opening statement first? Mr. Tulante?

PLAINTIFF'S OPENING STATEMENT

4
5 MR. TULANTE: Yes, Your Honor. Good morning and thank
6 you for the opportunity.

7 Your Honor, today, as you know about this case, the
8 Department of Justice wants to impose mandates on the City of
9 Philadelphia connected to federal immigration enforcement.
10 These mandates are, in the City's view, unprecedented, unlawful
11 and unconstitutional, and the Department's efforts to impose
12 them as so-called spending conditions attached to a federal
13 formula grant that the City has received every year without any
14 issue to support its criminal justice system is also unlawful.

15 If the Department is allowed to thrust these federal
16 immigration enforcement mandates to the City, Your Honor, we'll
17 show that the impact will be irreparable. We ask the Court to
18 prevent that outcome by issuing a preliminary injunction against
19 the Department's new JAG grant condition.

20 Today, the Court will hear from five city officials
21 who will describe the program and policies in Philadelphia that
22 are in jeopardy because of the Department's action. The
23 evidence presented today will make five things clear. First,
24 that the mandates the Department wants to impose will not
25 improve criminal justice or public safety in Philadelphia.

1 Quite to the contrary, they will actually undermine it. We
2 can't have a cop on every corner in Philadelphia. Community
3 policing counts upon the people in the community who are
4 officer's eyes and ears on the streets. Their trust is critical
5 to the reporting of crimes. Making Philadelphia police officers
6 abandon the confidentiality policies and effectively become
7 federal immigration enforcement agents will send victims and
8 witnesses into hiding and into the shadows and therefore allow
9 crime to thrive, and this is particularly the case in immigrant
10 neighborhoods.

11 Second, the Department's new conditions would hurt
12 more than help the City's law enforcement efforts. It would
13 affect the City's ability to administer basic public services
14 like preventative healthcare as significant services to children
15 and crime victims in the city's immigrant population. That
16 hurts every Philadelphian. Confidentiality policies are in
17 place to protect information of patients who need city health
18 services. Without that guarantee of confidentiality, members of
19 the immigrant community may not obtain vaccinations or treatment
20 for highly communicable diseases.

21 Third, the City complies with Section 1373. We
22 cooperate with the federal government as to immigrants who are
23 suspected of crimes or convicted of crimes. By city policy and
24 practice, Philadelphia shares information about every criminal
25 suspect it encounters or individual arrest with its federal law

1 enforcement partners, including ICE. So when the Department
2 submitted a declaration from Jim Brown saying that ICE needs
3 lists of arrestees in local custody, we'll hear today that
4 Philadelphia provides exactly that kind of information through
5 these databases. The City does provide ICE advance notification
6 of the release of persons from custody when ICE presents a
7 criminal judicial warrant, and it does provide federal
8 authorities access to its prisons when the person they wish to
9 interview consents to that request. The City, through its
10 police officers, works with its federal law enforcement partners
11 in several criminal task forces to investigate crimes committed
12 in our area by non-immigrants and immigrants alike. So the city
13 cooperates when it comes to immigrants who are criminals, but
14 what the Department now wants JAG recipients to do including
15 Philadelphia is to help enforce immigration laws against law
16 abiding people, even victims and witnesses of crimes. That
17 would jeopardize our residents perhaps in unintended ways, but
18 the harm will come nonetheless.

19 Fourth, our testimony will establish the Department
20 has never done anything like it's doing here before. It's never
21 done this before. The Court will hear from the person
22 responsible for managing the City's JAG grants. She'll discuss
23 the kinds of conditions that the Department is imposing to pass.
24 Not a single one require that Philadelphia assist the government
25 in enforcing federal immigration law.

1 Fifth and finally, Your Honor, the City will show that
2 the harm it will suffer without this Court's intervention.
3 Under the new JAG conditions for 2017, the City must either
4 abandon its policies that improve criminal justice, public
5 health and the general welfare in the city causing declines in
6 safety and general welfare in the city -- across the city or
7 abandon funding for significant criminal justice projects.
8 Either injury is irreversible for the City.

9 The evidence will show that the Court should issue a
10 preliminary injunction against the DOJ's unprecedented, unlawful
11 and unconstitutional grant conditions.

12 And, Your Honor, the main thing we'll show here today
13 is that we comply with federal law and it's really important for
14 the City in terms of our safety to be able to do what we do here
15 today. And so, with that, that's my short opening statement.

16 THE COURT: Thank you. All right. Mr. Garg.

17 DEFENDANT'S OPENING STATEMENT

18 MR. GARG: Your Honor, as you know from our briefing,
19 the Government believes that there's ample authority to impose
20 immigration related conditions on the receipt of federal dollars
21 through the Byrne JAG program that the City is challenging here.
22 We think that promotes a modest level of intergovernmental
23 cooperation related to law enforcement in the immigration
24 setting. We'll save our argument on that for next week's
25 hearing as the Court suggested.

1 As a preliminary matter for today's hearing, I do
2 understand that the City intends to sequester its witnesses
3 during today's hearing and I appreciate that. Just for the
4 record, I would ask the Court to enforce Federal Rule of
5 Evidence 615 regarding the presence of witnesses in the
6 courtroom.

7 THE COURT: Okay. All witnesses will be sequestered.
8 Do you mind if they -- if they want to stay in the courtroom
9 after they finish their testimony or?

10 MR. GARG: That is acceptable, Your Honor.

11 THE COURT: That's okay? All right. Thank you.

12 MR. GARG: Yes. Thank you.

13 THE COURT: Okay. Who's the first witness, Mr.
14 Tulante?

15 MR. TULANTE: Your Honor, the first witness is Police
16 Commissioner, Richard Ross. Before I call him, I just want to
17 for housekeeping purposes, I spoke to counsel of the Department
18 of Justice and we've agreed that -- we've submitted them a copy
19 -- a binder with exhibits. We've provided one to the Court and
20 there will be one for the witness. There are no disputes in
21 terms of admissibility and what we'll do as rather than going
22 through the process by admitting one by one, we'll seek to admit
23 them at the conclusion of the hearing.

24 THE COURT: Okay. That's agreed.

25 MR. TULANTE: And, with that, Your Honor, the City

1 calls Police Commissioner Richard Ross.

2 THE COURT: And the other witnesses will step outside?

3 MR. TULANTE: They already are outside, Your Honor.

4 THE COURT: Thank you. Good morning, Commissioner.

5 MR. ROSS: Good morning, Your Honor.

6 (RICHARD ROSS, Witness, is Sworn)

7 DEPUTY CLERK: Please state your full name and spell
8 your last name for the record.

9 THE WITNESS: Sure. Richard Ross, R-O-S-S, Police
10 Commissioner, Philadelphia Police Department.

11 MR. TULANTE: Your Honor, may I proceed?

12 THE COURT: Please.

13 DIRECT EXAMINATION

14 BY MR. TULANTE:

15 Q Good morning, Commissioner Ross.

16 A Good morning.

17 Q Could you please tell Judge Baylson where you work?

18 A Sure. I work in the Philadelphia Police Department.

19 Q And what do you do for the Philadelphia Police Department?

20 A I am the police commissioner.

21 Q How long have you been in that role?

22 A Twenty-two months.

23 Q And explain in very broad outlines what are your duties as
24 the Philadelphia police commissioner.

25 A Well, they're vast in nature. Ultimately, I'm responsible

1 for everything, but issues related to hiring, terminations,
2 training, policy implementation, community relations, crime
3 fighting, and the like.

4 Q And how long have you been a member of the Philadelphia
5 Police Department?

6 A Twenty-eight and a half years.

7 Q And I'm going to ask you to do the impossible. If you can
8 summarize working backwards some of the various roles you've
9 held in the police department starting with the most recent
10 position you had before you were commissioner.

11 A Sure. So prior to becoming the police commissioner, I was
12 the first deputy commissioner for eight years. In that
13 capacity, I was the operations deputy commissioner in charge of
14 a variety of duties, also filling in for the police commissioner
15 in his absence; often very similar and tantamount to the duties
16 of being a C of O of a corporation. Also was responsible for
17 overseeing crime fighting initiatives, community relation
18 issues, everything from labor relation and the like.

19 Prior to that --

20 Q Commissioner, who was the police commissioner when you
21 were the first deputy police commissioner?

22 A Police Commissioner Charles Ramsey. So, prior to that
23 eight years, which was a pretty extensive experience and which
24 gave me the opportunity to see the police department in
25 preparation for this assignment, I was a deputy commissioner for

1 three years in the capacity of Internal Affairs. In that
2 capacity, clearly, it involved investigating all police related
3 matters, both internal and external in nature, as well as some
4 issues related to criminal matters in other city departments.

5 Prior to that assignment, I was the captain of the
6 homicide unit where I was tasked with overseeing all death
7 investigations of a suspicious nature in the city interfacing
8 with the press routinely and dealing with various members of the
9 community as it relates to trying to explain issues about death
10 related investigations.

11 Q And is it fair to say, Commissioner, that you essentially
12 worked your way up through the police department?

13 A Yes, I did.

14 Q And are you from Philadelphia?

15 A Born and raised.

16 Q And give the judge some additional background. Do you
17 have any advanced degrees?

18 A Yes. Your Honor, I have a master's degree from St. Joseph
19 University in criminal justice.

20 Q And are you a member of any organization of police
21 officials?

22 A Yes. Several. In fact, several were here for a very
23 large conference this week; one being the International
24 Association of Chiefs of Police, Major City Chiefs which
25 consists of the 74 largest police agencies in the United States

1 as well as in Canada as well as the Police Executive Research
2 Forum and the National Executive (sic) of Black Law Enforcement
3 Executives which is otherwise known as NOBLE.

4 Q And how many -- approximately how many police officials
5 were here this past week?

6 A At least 15,000 or so.

7 Q And what do you discuss in these organizations?

8 A Present issues in policing. It could be about
9 immigration. It could be about community and police relations,
10 labor related issues, crime related issues, a whole host of
11 issues, and we meet -- Major City Chiefs, for example, meets
12 quarterly to discuss these issues to see how similar or
13 dissimilar some of the issues are relating to police agencies
14 across the nation.

15 Q Could you give Judge Baylson a little bit of overview of
16 the Philadelphia Police Department? How many police officers
17 are you in charge of?

18 A Sure. We are actually budgeted for 6,525 sworn. We
19 presently have about 6,400 so we're down a little bit, and we're
20 also budgeted for 800 civilians and that does not include the
21 part-time officers or school crossing guards as we will and
22 that's 1,037 of them are budgeted for that position.

23 Q And nationwide, where does the Philadelphia Police
24 Department rank in terms of its size of officers?

25 A We are the fourth largest department in the nation.

1 Q Commissioner Ross, given your duties, really describe to
2 the judge a couple of the major things that keep you up at
3 night.

4 A So one without question is gun violence. It's a very
5 intractable issue in the City of Philadelphia. It's one that we
6 grapple with getting our arms around pretty much annually not
7 much different than many other departments around the nation.
8 Given the climate that we're in right now, police community
9 relations is a major one trying to maintain relationships that
10 we have, particularly in communities of color, and also develop
11 and cultivate additional ones where we don't have them or where
12 those relationships may suffer.

13 So the issues are myriad in nature, but those are some
14 of the ones that are kind of hot button issues right now for us.

15 Q And if you could describe also what is your theory of
16 policing; in other words, when you think about crime fighting,
17 what are some of the things you think about in terms of
18 addressing crime?

19 A Well, one of the things that we are compelled to do is use
20 smart policing whereby we're using intelligence to respond,
21 react to and get in front of issues as quickly as we possibly
22 can, but from an overarching standpoint, community policing
23 would be the methodology or the style of policing that we
24 utilize. It is one that is utilized across the nation. It is
25 widespread views of many police chiefs that the way you have to

1 go and proceed in order to ensure a productive relationship and
2 a vital relationship with your respective partners, which are
3 your various members of your communities.

4 Q And how do you put that into place?

5 A Well, you have to be very intentional about developing
6 relationships in community. We have 21 police districts that
7 are headed by captains and because Philadelphia is such a large
8 department, many of our captains have a scope and depth of
9 responsibility that is very similar to small and medium-sized
10 cities given their respective populations and the manpower they
11 have reporting to them, so we task those men and women with
12 developing programs. Some of them are department wide which
13 they carry out; some of them are decentralized in nature where
14 individual captains will have different programs based on the
15 districts that they oversee.

16 But we also have programs in the City whereby we are
17 very intentional about pushing out our efforts to establish
18 relationships with our communities. And so we have a number of
19 programs and special interest groups that are headed by very
20 high ranking people, people that work directly under me, deputy
21 police commissioners, one of which would be assigned to Deputy
22 Commissioner Christine Coulter and she has an Asian American
23 police liaison group which actually has 16 different ethnicities
24 within that Asian community that are assigned to, and the duties
25 there are vast, but the primary one is extending themselves,

1 acting as emissaries on behalf of their particular groups in
2 order to help to sustain and cultivate relationships with those
3 different communities.

4 Q And let me just take you back in terms of really more
5 broadly. When you talk about community policing and creating
6 partnerships, where do interactions with the immigrant community
7 fall into that theory?

8 A Well, they fall in just as much as they would fall in with
9 everyone else, Your Honor. They -- we have to maintain and
10 establish relationships because they are our eyes and our ears.
11 We have to make sure that people understand what we do in the
12 Philadelphia Police Department and what we're about and the fact
13 that there's an absolute need to have partnerships that are
14 strong in order for us to ensure the vitality and safety of this
15 city. And, without them, we would be in peril quite frankly.

16 Q Why do you say that?

17 A Because although there are 6400 sworn officers, this is a
18 city of over a million and a half people, with far more that
19 visit and work here, and so there's no way that we could ever be
20 on every corner, in every neighborhood, simultaneously. Despite
21 our best efforts to be present and to create that sense of
22 omnipresence, it's just not practical. So we need to leverage
23 community partners in order to assist us in detecting crime,
24 reporting crime and just establishing relationships that will
25 improve the city.

Q Does the police department have any effort in recruiting bilingual officers?

A Absolutely.

Q Why is that?

A Well, we are actually very -- I guess you could say we're very intentional about our efforts to be diverse in our recruiting in general, but we realize that, you know, we've got a very, very diverse population. We interface with many different people. And on occasion, our first line responders, which are typically our patrol officers, come across people that may or may not speak English.

And so, in order to make sure that we can provide the best service possible, we need to have as many people who are bilingual, who have the capacity to interview and get to the core essence of what people need. And you can't do that unless you have people out there that have those skill sets. And we also need for people to understand that there are people serving in this department who may be of the same heritage and same ethnicity. And all those things help to garner that kind of support that you need.

Q Explain some of the outreach you've done and your familiarity with the immigrant community; not just now, but over the course of your 28-year career with the police department.

A So, again going back to some of the liaison groups we have, but starting in -- well, basically in every rank I've occupied

1 I've had an opportunity to interact with various immigrant
2 communities, even dating as far back to when I was a sergeant in
3 the early '90s in the North Philadelphia East Police Division.
4 A large Latino community. And actually even down here in Center
5 City, working in the 9th police district across the other side
6 of Broad Street. You've got multi-ethnic groups all throughout
7 the city.

8 Even going forward, as I was a lieutenant in the 35th
9 Police District, which is in the northwest part of the city,
10 where you get a large population of Asian communities from all
11 different groups and sectors, in the sense that we have people
12 from Vietnam, people from China, all over in those areas. So
13 you had an opportunity to connect with those folks, to get -- to
14 understand some of their cultures, to understand, you know, what
15 their issues are.

16 Moving forward even as a captain in the 14th District,
17 and it transcends even the immigrant community because districts
18 like the 14th District are so vast in nature that it houses some
19 of the most impoverished up to some of the richest people in the
20 city. And some of those folks are born and raised here and some
21 were not.

22 Q Where is the 14th District?

23 A It's in Germantown, Chestnut Hill, West Mount Airy, Mount
24 Airy. In terms of population, it is probably second to one
25 other district, and it houses approximately 110,000 residents

just in that district alone.

Q As the Commissioner for the Philadelphia Police Department, do you see as part of the role of the department to be an extension of ICE?

A We are not. We are a local law enforcement agency. We cooperate with all our federal authorities, but we are not an extension of ICE. We are not in the immigration business, and we believe that detracts from our mission. So, in the sense of performing those duties, the answer would be no.

Q One of the things that you hear about in terms of labels is the term "sanctuary city." In your estimation, is Philadelphia a sanctuary city?

A Respectfully, I don't even know what that is. We are a welcoming city in my estimation. I don't -- I'm not at all clear about what a sanctuary city is.

THE COURT: How did you phrase it, a welcoming city?

THE WITNESS: Welcoming city, Your Honor.

THE COURT: Well, let me just interrupt briefly, because sometimes people take the wrong inference from a term like "sanctuary city." But is that a phrase you use or do you know where it came from?

THE WITNESS: I hear it touted quite frequently, particularly now. But it is not a term that I use. So, quite honestly, Your Honor, I don't use that term in meetings. I don't use that term in referencing it with my staff or anything

1 like --

2 THE COURT: Some people may infer that it means that
3 if somebody commits a crime and they happen to be an immigrant
4 or undocumented person, they won't be arrested or prosecuted.
5 Does it mean that in any sense of the word?

6 THE WITNESS: Well, Your Honor, I think that inference
7 is correct, certainly within the law enforcement community, for
8 many of my colleagues, and that's why that connotation is never
9 used because we don't harbor criminals in the Philadelphia
10 Police Department. We don't really care who you are or where
11 you're from.

12 THE COURT: So, just for the record, if a police
13 officer saw somebody, a man, without further information
14 committing a crime, a serious crime, that officer would arrest
15 that man, right?

16 THE WITNESS: Absolutely.

17 THE COURT: Okay. Would it make any difference in the
18 arrest procedures or the prosecution, as far as the police
19 department is concerned, whether that man was a fully-fledged
20 citizen, was here on a Visa, was an undocumented immigrant, or
21 in any other category?

22 THE WITNESS: No difference at all, Your Honor. A
23 criminal is a criminal.

24 THE COURT: All right. Go ahead.

25 BY MR. TULANTE:

Q And on that -- just to follow that point, Commissioner, if that person, if police approached them and see evidence of a crime, and say "I'm undocumented," does that change the police department's approach in terms of investigating or prosecuting that person?

A If they committed a crime, they're going to be arrested.

Q Well, this is actually a good pivot to talk about some of the specific policies that the department has. There's a book in front of you, and if you go to P-1.

MR. TULANTE: And, Your Honor, there's one for you, as well, and for your staff.

BY MR. TULANTE:

Q Do you have it in front of you?

A I do.

MR. TULANTE: Your Honor, for the record, this is Philadelphia Police Department Memorandum 016. It's cross -- we're cross --

THE COURT: That was included in the --

MR. TULANTE: Exactly.

THE COURT: -- exhibits to the --

MR. TULANTE: It's Exhibit 3 to our complaint for declaratory judgment relief.

THE COURT: Right.

MR. TULANTE: But we just want to make sure that it's separately marked and he has it in front of him.

1 THE COURT: Okay.

2 MR. TULANTE: And when Your Honor has it, I can
3 proceed.

4 THE COURT: This is 1.06?

5 MR. TULANTE: This is P-1. Yeah, yeah, Memorandum
6 01.06.

7 THE COURT: Okay.

8 MR. TULANTE: May I proceed, Your Honor?

9 THE COURT: Yes.

10 BY MR. TULANTE:

11 Q Do you recognize Exhibit P-1?

12 A I do.

13 Q And what is it?

14 A It's a departmental memorandum regarding immigrants.

15 Q And what is the date of that memorandum?

16 A It is dated May 17, 2001.

17 THE COURT: Say that date again. Sorry.

18 THE WITNESS: May 17th, 2001.

19 THE COURT: '01?

20 THE WITNESS: '01, yes, Your Honor.

21 THE COURT: Okay. So it's like 16 years old?

22 THE WITNESS: Correct, Your Honor.

23 BY MR. TULANTE:

24 Q And who was the commissioner who issued this memorandum?

25 A John Timoney.

1 Q And were you in the department at that time?

2 A I was.

3 Q Before we jump into the substance of P-1, can you please
4 explain to the Court what is the function of a memorandum within
5 the police department?

6 A A memorandum is just another form of a policy that we
7 implement. Typically, they are generated to deal with very
8 specific issues. But they are to guide the actions or the
9 manner in which we do things and conduct ourselves in the
10 department.

11 Q And how does the police department transmit memoranda to
12 its line officers?

13 A Well, it's more than one way; but one of them has to do
14 with submitting them all to our local districts, and the
15 officers have to sign indicating that they received them.

16 Q And if you look at Section 2 of the memorandum, described
17 "policy," have you had an opportunity to review that before
18 today?

19 A Yes, I have.

20 MR. TULANTE: Does Your Honor have a copy of it? I
21 just want to make sure you're --

22 THE COURT: I know I have a copy for it. I don't have
23 it right in front of me, but I --

24 MR. TULANTE: We have an extra copy.

25 THE COURT: But I'm familiar with it.

MR. TULANTE: Okay.

THE COURT: Go ahead.

BY MR. TULANTE:

Q And does that Section 2 accurately reflect the policy of the Philadelphia Police Department?

A Yes, it does.

Q And if you look in particular to 2B, the second sentence, and if I may read that for the record:

"The Police Department will preserve the confidentiality of all information regarding law-abiding immigrants to the maximum extent permitted by law."

Have I read that sentence correctly?

A You have.

Q And with respect to that, why is that? Why is that the police department's policy?

A Because we absolutely need for all of our people in the city, all of our population, to understand that we're there to protect and serve them, and that we are not in any way trying to do anything to put them in harm's way, and that they should feel totally comfortable coming forth with whatever information they deem necessary to safeguard not only themselves, their families, but their fellow neighbors, as well.

Q And in that provision that I read, it refers to "law-abiding immigrants." Why is that?

1 A Because what we're talking about is people who are not
2 breaking the law. And we are not talking about people who are
3 committing crimes and wreaking havoc on our streets. And trying
4 to make it very, very clear that we are not trying to harbor
5 criminals because that's not what we're about in the
6 Philadelphia Police Department.

7 Q And if you then turn to Section 3, which has "procedure"
8 and then you see in A there are circumstances for where that
9 confidentiality can be waived or that information can be shared;
10 do you see that?

11 A Yes, I do.

12 Q And you see Section 3 on page 2, one of the exceptions is,
13 and I quote,

14 "The immigrant is suspected of engaging in criminal
15 activity, including attempts to obtain public
16 assistance benefits through the use of fraudulent
17 documents."

18 Have I read that correctly?

19 A You have.

20 Q And why is this exception built in there?

21 A Well, this exception, like others in this policy, is aimed
22 to underscore the fact that there is a distinction that we're
23 making between victims and witnesses, as opposed to criminal
24 violators. And we want to make that very clear to all the
25 members of the rank and file, that we do not support the notion

1 of harboring criminals. However, we do not want to put our
2 other populations, particularly victims and witnesses, in a
3 position to be harmed in any way.

4 Q And is there anything -- anything in this policy that
5 prohibits the Philadelphia Police Department from continuing to
6 work and cooperate with federal law enforcement?

7 A Not at all.

8 Q And if you look to Section 3C, do you see anything related
9 to that?

10 A Yes, I do.

11 Q And what is that?

12 A Well, it clearly says that we will continue to cooperate
13 with federal authorities in investigating and apprehending
14 immigrants suspected of criminal activities. However,
15 immigrants who are victims of crimes will not have their status
16 as an immigrant transmitted in any manner.

17 Q And since Your Honor had asked you about -- this has been
18 in place for 16 years; is that correct?

19 A Correct.

20 Q And since before this dispute regarding JAG funding, in the
21 16 years that this policy has been in place, has the
22 Philadelphia Police Department had any issues with the federal
23 government regarding this memorandum?

24 A I am not aware of one.

25 Q And you've been in the force the whole 16 years?

1 A Yes, I have.

2 Q Let me direct your attention to P-2. And that's just tab 2
3 in your binder.

4 MR. TULANTE: For the record, Your Honor, this was
5 filed as Exhibit 4 to our complaint for injunctive relief.

6 THE COURT: Okay.

7 BY MR. TULANTE:

8 Q Do you have P-2 in front of you?

9 A I do.

10 Q Do you recognize what P-2 is?

11 A Yes.

12 Q And what is it?

13 A Mayor's Executive Order.

14 Q And if I can direct your attention to Section 2, in
15 particular --

16 THE COURT: This is Executive Order 8-09; is that
17 right?

18 THE WITNESS: Correct, Your Honor.

19 THE COURT: Okay.

20 MR. TULANTE: Yes, Your Honor. For the record, it's
21 Executive Order numbered 8-09, Policy Concerning Access of
22 Immigrants to City Services.

23 THE COURT: Right.

24 MR. TULANTE: Signed by Mayor Michael Nutter on
25 November 10th, 2009.

BY MR. TULANTE:

Q And with respect to Section 2 and Part B, do you see that there are certain provisions related to the police department?

A Yes, I do.

Q And these are four prohibitions with respect to what law enforcement can't do in terms of inquiry?

A That's correct.

Q I want to direct your attention to B3, and that is,

"Law enforcement shall not inquire about immigrant status of crime victims, witnesses or others who call or approach police seeking help."

Have I read that correctly?

A You have.

Q And is that the policy of the Philadelphia Police Department?

A It is.

Q And why is it important not to inquire about status of -- immigration status for crime victims and witnesses?

A Well, first and foremost, our obligation is to protect those who call us and to provide whatever assistance our constituents may need. You cannot effectively carry that mission out if you have a population who is concerned about their status being revealed for whatever reason. It is not our mission. It is not our concern at that moment.

What we are concerned with is providing the best

1 service that we possibly can and safeguarding the well-being of
2 those in the city who either live or visit here. And that's
3 what our mission is.

4 Q And then you see Section 3 titled "Confidentiality of
5 Information"; do you see that?

6 A Yes, I do.

7 Q And with respect to that, if I can direct your attention to
8 confidential information here is defined as "any information
9 obtained or maintained by city agencies relating to an
10 individual's immigration status." Did I read that correctly?

11 A Correct.

12 Q If I can direct your attention to 3-B3; do you see that?

13 A I do.

14 Q One of the exceptions is the individual to whom such
15 information is -- pertain to -- suspected by such officer
16 employee -- or such officers or employee's agency of engaging in
17 criminal activity other than the mere status of an undocumented
18 alien. Do you see that?

19 A I do.

20 Q And what does that mean?

21 A Well, I mean, what we're talking about here is that if
22 someone is engaging in criminal activity, then that changes the
23 game. And we have no interest in withholding that information
24 from any federal authorities. And so it's important to
25 delineate the difference because there is a difference. And,

1 for us, once again, we don't concern ourselves with your status
2 when you're a criminal. If you're a criminal and you commit
3 violations, then there are no distinctions for us.

4 Q And to follow up on Judge Baylson's hypothetical regarding
5 treatment of people with respect to status, if ICE asked you for
6 status information, immigration status information, of someone
7 who's suspected of engaging in criminal wrongdoing, is there
8 anything in this order that prohibits you from sharing their
9 information with ICE?

10 A There is not.

11 Q And is there anything in this order that prohibits the
12 Philadelphia Police Department from continuing to cooperate with
13 its federal law enforcement partners?

14 A Not only is there not one, but we have the luxury of
15 enjoying a tremendous relationship with all our federal
16 authorities, FBI, ATF, DEA, ICE, Homeland Security, and everyone
17 else.

18 THE COURT: Let me ask one other question that maybe
19 really gets to this. And, Mr. Tulante, I'm sure you have
20 personal familiarity with this because of your service as an
21 AOSA, but there is a federal -- it is a federal crime for
22 someone who has been deported to re-enter the United States
23 without permission.

24 MR. TULANTE: It's 8 U.S.C. 1326, illegal entry.

25 THE COURT: I don't have in front of me the exact

1 section of the criminal code, but --

2 MR. TULANTE: 8 U.S.C. 1326(a).

3 THE COURT: There you go. We have a lot of those
4 cases.

5 MR. TULANTE: Yes.

6 THE COURT: And in that case, the defendant's status
7 as an immigrant is an element of the crime. So I wanted to ask
8 the question -- and if the Commissioner doesn't know himself,
9 maybe you can find out and supply it through subsequent
10 testimony or otherwise -- but this crime only applies to people
11 who are illegal immigrants; that is, they've been deported once
12 and they come back in again.

13 So I just want to know if your department has any
14 particular policy about if you learn that a person -- who may
15 not have committed any state crime or other federal crime --
16 that is, they may just be wandering in the street, but if
17 they're discovered to be in the United States illegally -- that
18 is, having once been deported -- that is a federal crime. And
19 I'm just asking if you have any specific policy about that
20 point.

21 THE WITNESS: Your Honor, respectfully, there would be
22 limited opportunity for the members of this department to know
23 or deal with that issue because we don't ask those questions.
24 So, barring some criminal violation being involved or attached
25 to that interaction, we probably would not know the answer to

1 that anyway.

2 THE COURT: All right. So if the person -- so if I
3 changed the hypothetical a little bit, and if that person -- say
4 an officer did see that person committing a crime and they were
5 arrested, would the -- if the individual volunteered that he was
6 an immigrant, would ICE be notified of that or not?

7 THE WITNESS: Well, to be sure -- to be certain, I
8 can't be, because the policy is so solid with us about not
9 asking that status that I think it is more than clear that most
10 officers would not pursue that. However, there could be
11 extenuating circumstances all the time. So -- in this business,
12 as you might imagine, there are no absolutes. But we don't have
13 a policy definitively that outlines that.

14 MR. TULANTE: Your Honor, can I ask this a different
15 way?

16 THE COURT: Yeah, but I can ask one more question?

17 MR. TULANTE: Yeah, of course.

18 THE COURT: So if a person is arrested and the
19 city-wide policy, as I understand it, at least -- let's say
20 they're arrested for a felony. They're taken to what we call
21 the roundhouse and they're photographed and fingerprints are
22 taken. Is that a uniform policy?

23 THE WITNESS: That is uniform policy.

24 THE COURT: All right. And that enables you through
25 national databases to find out if that person has any prior

1 convictions anywhere in the United States. Would that be a fair
2 statement?

3 THE WITNESS: That would be correct.

4 THE COURT: All right. And if it turned out that that
5 person had prior convictions and one of those related to this
6 crime that I'm talking about -- that is, they were previously
7 convicted of illegal entry; that is, they're recidivists in
8 terms of coming back a second time, that would -- your
9 department would learn just from the rap sheet, as you call it,
10 that this individual is definitely an immigrant, because that's
11 the only person who can be convicted of this crime -- it only
12 applies to people who are illegal immigrants. In that
13 situation, would you notify ICE?

14 THE WITNESS: I think there could be instances where
15 we would, Your Honor, if we knew that.

16 THE COURT: Okay.

17 THE WITNESS: We would never intentionally withhold
18 information.

19 THE COURT: Okay.

20 THE WITNESS: It's just that we don't seek to provide
21 that relative to witnesses and victims.

22 THE COURT: In my hypo, the information does not come
23 from the suspect or the defendant. You've gotten it
24 independently as a result of getting a criminal record.

25 THE WITNESS: Right.

1 THE COURT: Would that make a difference? I didn't
2 see this addressed in any of the written policies.

3 THE WITNESS: Right. And this is why, respectfully, I
4 think it depends on the circumstance. And quite frankly, it
5 would depend on the officer. I'm not aware of any circumstance
6 where we definitively outline that you're supposed to do it in
7 those circumstances that you're alluding to.

8 THE COURT: Okay. Thank you.

9 MR. TULANTE: Well, let's take it --

10 THE COURT: Go ahead.

11 BY MR. TULANTE:

12 Q Does ICE routinely -- just in terms of -- to your
13 knowledge, in terms of actual practice, does ICE routinely seek
14 such information from the Philadelphia Police Department?

15 A Do they routinely seek it?

16 Q Yes. Do they ask for the police department to provide a
17 listing -- irrespective of whether there's a crime or
18 whatever -- status --

19 A Well, I believe ICE would have it themselves, so they would
20 never really have to ask us. They would know generally.

21 THE COURT: But ICE wouldn't know this person has been
22 arrested.

23 THE WITNESS: Right. So, in this case, I believe that
24 they -- we're not routinely getting that information just
25 wholesale like that from ICE.

1 BY MR. TULANTE:

2 Q Well, to the judge's point, when somebody is booked and
3 their fingerprints are shared through the database, are you
4 aware if ICE has access to that? In other words, they have
5 knowledge that somebody's in custody?

6 A They absolutely do. As we -- when we book anyone, the
7 federal authorities get that information through databases, and
8 that is shared with ICE.

9 THE COURT: So ICE could -- as far as you're
10 concerned, ICE could determine that information itself?

11 THE WITNESS: Absolutely. And, Your Honor,
12 respectfully, I thought part of the question was about if this
13 were an encounter where no arrest was actually made, and would
14 that officer actually be taking actions to make a notification
15 if there were no arrest associated with it.

16 THE COURT: Okay.

17 BY MR. TULANTE:

18 Q And I know this is about prisons, my next question, so --
19 but I wanted to ask you in terms of ICE generating detainer
20 requests. Are you aware of whether those detainer requests are
21 generated from information received from inquiries of police
22 department or ICE getting that information separately through
23 these databases?

24 A Well, generally, they're going to get it from databases.
25 And those databases are going to come from our arrest

1 information and ICE will have access to that and understand how
2 that works. And so we don't withhold the information when
3 someone is fingerprinted or photographed. And that
4 determination will be made by federal authorities and it will be
5 turned over to ICE.

6 Q Let me -- what would happen if the Philadelphia Police
7 Department started to ask and then disclose immigration status
8 information, across the board; not just people suspected of
9 criminal activity?

10 A Well, in my humble opinion, it would be stifling. It would
11 create an environment where some of our partners in the
12 neighborhoods would fear us, and we can ill-afford to have that
13 happen. It is absolutely vital that we have the opportunity to
14 maintain and cultivate these relationships as much as possible.

15 Having relationships across the board in the city is
16 something that we work very hard at. And in some instances,
17 it's a neighborhood by neighborhood thing. And in some
18 neighborhoods, we struggle mightily to try to establish these
19 relationships. And I'm not just talking about immigrant
20 communities. I'm talking about all communities.

21 And so for us, we believe that it would severely
22 inhibit our ability to gain information, intel, and things that
23 would keep the city safer. And because we have absolutely need
24 this from the people across the city -- and that's irrespective
25 of their immigrant status or their status.

Q And talk about the impact on victims and witnesses.

A It is very similar. If you have a circumstance where people are not comfortable coming forward, whether it be issues related to domestic violence in particular, sexual assaults, it could be even things like burglary. We work based on pattern analysis in many instances, in terms of trying to stave off particular future crimes.

And if we are unable to identify crime patterns because victims along that pathway are holding back information out of fear of their status being revealed, well, now we're operating behind the eight ball. Because instead of knowing right from the outset that there's a pattern developing, we are potentially put in a position to find these things out way too late.

And I'll give a very specific example. You could be talking about a burglary in a particular neighborhood that is filled with an immigrant community. Burglars all across this city work in patterns. And they tend to feed in a particular neighborhood, either until they get caught or there's too much heat put on that neighborhood by the police department.

And so if we cannot adequately identify patterns, then that's just one example of one crime. It really puts us in a bad position as a police department, because working with pattern analysis and smart policing, these are the things that enable us to be better and to improve upon our service to the

1 city.

2 Q And explain, if you could, the impact it would have on your
3 use of informants.

4 A It would just be daunting, because there's no way in the
5 world you'd want to come forward as a source of information or
6 as a criminal informant if you believe that you're in jeopardy
7 of being deported; or not just you, your children for that
8 matter. And so we have people who may be of the immigrant
9 community and their children are here, and we're concerned about
10 not only their well-being and their concerns about being
11 reported, but we're concerned about how they perceive the police
12 department.

13 We don't want anyone to perceive us as a menacing
14 group. We -- anyone who's been around for the last 24 to 30
15 months has to realize the situation that modern and municipal
16 policing finds itself in. Very, very difficult to maintain some
17 of our relationships. Very difficult to improve upon our
18 images, particularly with the 24-hour news cycle that we contend
19 with. And so we don't need any more obstacles in our way.

20 We deal with enough narrative and rhetoric that has
21 been harming the images of this profession, which I happen to
22 think is a very noble one, and so we really want to maintain as
23 many relationships as we can.

24 I cannot underscore that enough, Your Honor. In a
25 city like Philadelphia, where we are proud of this city, but we

1 have our share of issues. And that being said, a lot of those
2 issues can really be assisted with partnerships. It is so vital
3 to develop these partnerships.

4 This is why we use widespread use of social media,
5 community meetings, town halls, play dates, police athletic
6 league, and a myriad of other things that are designed
7 specifically to show people who we are as a police agency, what
8 we're about, and why we're about protecting and serving everyone
9 in the community.

10 Q Are there any particular types of crime you think this
11 would impact if -- again, if you started to disclose -- or share
12 immigration status information?

13 A It could potentially affect many, but I'm most concerned
14 about sexual assaults, domestic violence, things where it can be
15 very difficult to detect absent someone else's intervention.
16 And in particular, that's why I started with domestic violence.
17 Very, very concerned about the unwillingness to come forward for
18 fear of deportation or status being repealed.

19 Again, it goes deeper -- and I think this is what's
20 important to emphasize. It's deeper than the individual. And
21 even just their individual crime being reported, Your Honor.
22 It's really about the holistic effect. The effect that it has
23 on the communities that are adjacent and/or contiguous to a
24 particular crime area or geography.

25 And because, again, in many instances, criminals --

1 they don't start and stop. A robbery offender is not going to
2 start and stop just because he decides that he's no longer going
3 to be a robbery person. Or a sexual offender is very much the
4 same way. And so these people have to be caught, and we need as
5 many people as possible -- and beyond that, even in cases of
6 domestic terrorism, it is often someone from those communities
7 that help us identify people who wouldn't otherwise be
8 identified. And so we need as many eyes and ears out there as
9 possible.

10 Q Commissioner, let's talk -- let's pivot to crime rates.
11 You've had one full year -- one calendar year of crime rates as
12 commissioner. Can you share what the crime rate was for
13 calendar year 2016?

14 A Sure. So, we finished the year with Part 1 crime, which as
15 you know is everything including murder, rape, robbery,
16 aggravated assault, stolen autos, and many other crime indices,
17 but we finished down with a 40-year low. We're proud of that.
18 Dating back to the '70s.

19 THE COURT: For what year, 2015?

20 THE WITNESS: 2016.

21 THE COURT: 2016.

22 THE WITNESS: 2016, Your Honor. And while we still
23 aren't celebrating, it is an indicator of progress. We believe
24 that progress has as much to do with our smart policing efforts
25 as it has to do with the many partnerships that we've

1 established.

2 BY MR. TULANTE:

3 Q Do you attribute any of that reduction, historically low
4 crime rate, to the relationship you have with the immigrant
5 community?

6 A I attribute it to everybody in our community, and they're
7 equally a part of it, because -- again, it goes to how we
8 police, how we utilize technology, how we utilize intel. And
9 intel usually comes, first and foremost, in the form of human
10 beings; human beings who either give us a call, who send us a
11 tip, or they just flat-out were a source of information in a
12 number of ways.

13 So, absolutely. While it is nice and glorified to
14 talk about technology and this proliferating of TV shows that
15 deal with science and technology, the various CSIs, the reality
16 of it is most of these crimes are solved by an individual
17 calling someone. And whether it be an investigator or police
18 officer directly, or whether it be a tip line where they look at
19 a video that we push out -- and we push out many of surveillance
20 videos capturing images of criminals -- it could be a variety of
21 sources, but they're absolutely vital to us.

22 Q In your training and over 28-year experience in various
23 roles on the police department, have you found any link between
24 immigrants and crime?

25 A No, I have not.

1 Q And what about undocumented immigrants?

2 A No, we have not.

3 Q Sir, aren't you concerned that if they're undocumented --
4 in other words, somebody who came here illegally or has
5 overstayed a visa, that there would be an increase in crime in
6 Philadelphia?

7 A Well, one, I'm not concerned about that because there's no
8 data in Philadelphia that I'm aware of that would suggest that.
9 And, two, that quite frankly is not within my purview. We have
10 the responsibility of safeguarding this city, patrolling our
11 streets, preventing crime, and that's our primary role. And we
12 don't wish to be involved in anything that detracts from that
13 mission.

14 Q In your looking at crime statistics and crime overall,
15 where are you concerned -- who are you concerned in terms of
16 committing crimes?

17 A Well, I mean, the sad reality is this. In speaking of the
18 people that we are aware of, either via actual arrests, people
19 who we may not even arrest but we know who the suspects are,
20 because we don't have the requisite probable cause to bring them
21 to justice, in the lion's share of those cases it is people who
22 were born and raised in Philadelphia and come from our various
23 neighborhoods, without question.

24 Q Commissioner Ross, do you see ICE as the enemy of the
25 Philadelphia Police Department?

1 A Absolutely not. They're partners in law enforcement.

2 Q Well, does the police department have any ongoing
3 partnerships with federal law enforcement agencies?

4 A We have multiple. And so all the federal agencies, Your
5 Honor, in the city, FBI, DEA, ATF, everything from Homeland
6 Security, ICE, as well as the U.S. Marshals, we have a great
7 relationship. We have task force officers assigned to each and
8 every one of them. And as you well know, in a city like
9 Philadelphia, most of those agencies, save for maybe the FBI,
10 could not even exist if it's not for our assistance.

11 Q What do you mean by that?

12 A Well, many of those agencies are too small in nature, and
13 so they need the assistance of those task force officers who
14 then become deputized as federal agents or marshals, if you
15 will, and -- depending on the agency. And that enables them to
16 use their forces as force multipliers. I mean, they're able to
17 take people that they didn't otherwise have and use them even to
18 assist in their federal missions.

19 Q And what -- just if you can give the Court a few examples
20 of some of these task forces.

21 A So, I mean, they're different in scope. We have joint
22 terrorism task forces in the FBI. We have drug squads in pretty
23 much FBI, DEA, even some to the degree in ATF. We have gun
24 violence task forces out there. There are many in nature, but
25 the point is is that we work collaboratively with all of these

1 agencies. There's rarely a month or so that goes by that I
2 don't have discussions with the local supervisor agents in
3 charge, and so we work together to make this city and this
4 region safer. And I think by and large we do a decent job of
5 it.

6 Q Do you have any -- as part of any of these task forces, is
7 there a task force where there are representatives of the police
8 department and ICE on the same task force?

9 A We do.

10 Q And what does that relate to?

11 A Our relationship is good. I mean, the only difference is
12 that officer is -- my understanding is there's a memorandum of
13 agreement that they will not work in a capacity where they deal
14 with immigration issues. But they'll deal with other Homeland
15 Security related issues.

16 Q And I just want to get to the final area. Let's talk very
17 quickly about JAG funding. What is the annual budget,
18 approximately, of the Philadelphia Police Department?

19 A Well in excess of 600 million.

20 Q So with respect to JAG funding, we're talking about a lot
21 less money than that, why would the loss of that money be
22 significant to the police department?

23 A Because somewhere in the neighborhood of 96 to 97 percent
24 of our operating budget deals with personnel costs and benefits.
25 And so while that may sound like a lot of money, it is a lot of

1 money, but it is essentially allotted for those issues. So it
2 doesn't leave us with a lot when you have to take into account
3 there are other things that have to happen relative to capital
4 expenditures.

5 So that money that we get, we totally rely on it and
6 our ability to use it for overtime, for crime suppression,
7 things that deal with technology. We absolutely need it. And
8 so while it may seem like a small percentage of our operating
9 budget, in the grand scheme of what we have left, it is
10 significant.

11 Q You had talked about earlier -- you testified about your
12 concerns about losing trust with the immigrant community if your
13 policies were changed, including disclosing immigration status
14 information of victims and witnesses. Explain to the Court how
15 easy or difficult it is to regain that trust once it is lost.

16 A Well, Your Honor, here's the thing. When you have -- I
17 guess programs that are aimed at cultivating relationships, you
18 work very hard at getting there. It's not always an easy
19 endeavor, but you work and you strive hard to gain trust of your
20 various communities. And as I testified to previously,
21 sometimes within a particular neighborhood that can be block by
22 block.

23 And so you're challenged to get there. Losing that
24 trust once you already have it, almost makes your challenges
25 insurmountable, because you've already strived hard to gain

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1 those relationships and they're not necessarily easy to get,
2 even in communities that are not immigrant. And so you don't
3 want to do anything to jeopardize that. And once you've lost
4 that trust, it's -- you can almost forget it, because there's no
5 reason for anyone to believe that you're legitimate. And trust
6 and legitimacy go together.

7 MR. TULANTE: Your Honor, may I have the Court's
8 indulgence to check with my colleagues?

9 THE COURT: Sure.

10 (Pause)

11 MR. TULANTE: Unless Your Honor has any questions of
12 Mr. Ross --

13 THE COURT: Well, first let me see if defendant's
14 counsel -- do you have any questions?

15 MR. GARG: Yes, we do, Your Honor.

16 THE COURT: Go ahead.

17 CROSS-EXAMINATION

18 BY MR. GARG:

19 Q Good morning, Commissioner Ross.

20 A Good morning.

21 Q My name is Arjun Garg. I'm with the U.S. Department of
22 Justice. Sir, you talked today about seeing yourself as
23 cooperating with ICE but not an extension of ICE. Fair?

24 A Fair.

25 Q I just want to explore a little bit with you the dimensions

1 of that cooperation in terms of what you understand the City
2 does. So, as you understand City policy, can a city employee
3 respond if the employer receives a request from ICE asking
4 whether a particular alien in being held in the City's law
5 enforcement custody?

6 THE COURT: Well, let me -- there's no objection, but
7 I just want the record to be clear. He's the police
8 commissioner, and your question is "any" city employee. So I
9 don't know that he has knowledge about what the policy is
10 outside of the police department. But I believe Mr. Tulante
11 that the prison system has certain regulations and one of your
12 witnesses is going to answer for the prisons. Is that correct?

13 MR. TULANTE: Yes. Yes, Your Honor. We'll make
14 available the next witness, Brian Abernathy, and he is actually
15 the policymaker on that order. And he can --

16 THE COURT: All right. But does he have knowledge of
17 prison system policies?

18 MR. TULANTE: Absolutely. Absolutely.

19 THE COURT: All right. Could you limit your question
20 to the police department initially, and then you can ask him
21 broader questions.

22 BY MR. GARG:

23 Q Sure. So limiting all these questions to the portions of
24 the city that are under your supervision as the police
25 commissioner, as you understand city policy, can an employee

1 under your supervision respond if that employee received a
2 request from ICE asking whether a particular alien is being held
3 in the City's law enforcement custody?

4 A Respond that they're in custody? Yes.

5 Q To your awareness, have employees under your supervision
6 been so advised or trained by city authorities?

7 A I believe so.

8 Q As you understand city policy, can an employee under your
9 supervision respond if the employer receives a request from ICE
10 asking for identifying information of a particular alien being
11 held in the City's law enforcement custody?

12 A If they've been arrested for a criminal violation, yes.

13 Q Okay. And otherwise?

14 A If they're a witness or a complainant, no. We wouldn't be
15 revealing that information.

16 Q As you understand city policy, can a city employee respond
17 if the employee received -- city employee under your -- let me
18 start over.

19 As you understand city policy, can a city employee
20 under your supervision respond if that employee receives a
21 request from ICE asking the location where a particular alien is
22 being held in the City's law enforcement custody among various
23 correctional facilities?

24 A Well, if they're in a correctional facility, the assumption
25 is they were arrested, and so they can respond to that

1 indication or that request.

2 Q To your awareness, have city employees under your
3 supervision been so advised or trained?

4 A Yes.

5 Q As you understand city policy, can a city employee under
6 your supervision respond if the employee receives a request from
7 ICE asking when a particular alien will be released from the
8 City's law enforcement custody?

9 A Well, my understanding is that that information will be
10 revealed about the fact that they are in custody, but not
11 necessarily detained, so -- and to answer you, I'm not sure I
12 understand your question.

13 THE COURT: And I don't understand what you mean by
14 "in custody but not detained."

15 THE WITNESS: Well, I mean in terms of how long
16 they'll be detained. I'm sorry. To be clear.

17 BY MR. GARG:

18 Q So as you understand what you just said, how long a person
19 will be detained, does that -- when let's say a police officer
20 communicates how long a person is going to be detained, is that
21 the same in your mind as indicating when the alien is going to
22 be released?

23 A That's what I'm referring to, yes.

24 MR. TULANTE: Your Honor, I'm just a little confused
25 on the line of questioning because the --

1 THE COURT: Did you object?

2 MR. TULANTE: I object in the sense --

3 THE COURT: Well, I'll sustain the objection.

4 MR. TULANTE: -- he's the police commissioner and
5 these are --

6 THE COURT: Just rephrase it, because -- having read a
7 lot of the materials that both sides have presented, I think it
8 may be relevant for the record to draw a distinction between
9 somebody who has been arrested but not convicted, someone who's
10 been convicted but not sentenced, and someone who has been
11 convicted and sentenced but may be taking an appeal.

12 So these are technical issues -- well, they're not
13 necessarily technical, but I think they may be material to some
14 of the issues that are going on in this case. So you're welcome
15 to ask about all of those, but I think they ought to be
16 separated, respectfully.

17 MR. GARG: Sure. I understand that, Your Honor.

18 THE COURT: It's one thing for someone who is arrested
19 and not even had a preliminary hearing, and -- is under our
20 state procedure. We're talking about people who are arrested by
21 police officers. So sometimes Philadelphia police officers
22 arrest people who are then put into federal custody.

23 Now I assume you're not talking about that. We're
24 talking about people who go into state custody, who go to a
25 state like detention center, would go to a state or a

1 city-operated prison facility. Is that correct? I mean, these
2 are -- these could be crucial differences in some of the issues
3 that are going on here.

4 MR. GARG: Correct, Your Honor. So let me clarify
5 what I'm asking about. The City's own law enforcement custody
6 or -- not federal law enforcement custody.

7 THE COURT: All right. And this is somebody who's
8 just been arrested, right? They're not convicted of anything.

9 MR. GARG: Correct. Someone -- let's break it down,
10 as the judge suggested.

11 BY MR. GARG:

12 Q So, starting with an alien who has been arrested and is
13 detained but not convicted yet. As you understand city policy,
14 could a city employee under your supervision respond to a
15 request from ICE asking when an alien who has been arrested but
16 not convicted will be released from the City's law enforcement
17 custody?

18 A Yes.

19 Q And to your awareness have city employees been so advised
20 and trained?

21 A Yes.

22 THE COURT: All right. Now, let me just --

23 MR. TULANTE: And, Your Honor, just to be clear --

24 THE COURT: Let me just ask the Commissioner. I don't
25 know how anybody could possibly know the answer to that question

1 when they're going to be released, because they may make bail.
2 They may be in jail for a crime for which bail is not allowed,
3 such as first degree murder.

4 So, I don't know how any -- I don't know how even a
5 judge would know the answer to that question, or a prosecutor,
6 let alone a police officer or a prison official.

7 BY MR. GARG:

8 Q So let's move on to the next category the judge identified.
9 Somebody who -- we'll talk about an alien who has been arrested
10 and convicted and is in city law enforcement detention. So, as
11 you understand city policy, can a city employee respond if the
12 employee received a request from ICE asking when an alien who
13 has been convicted of a crime will be released from the City's
14 law enforcement custody?

15 MR. TULANTE: Your Honor, may I object? Just in terms
16 of law enforcement detention, I just want to make clear that
17 counsel is talking about police. Law enforcement may encompass
18 prisons that the line of questioning is really directed --

19 THE COURT: Well, yeah, limited to your knowledge
20 about police officers, I'll overrule the objection. You can
21 answer.

22 THE WITNESS: So it is difficult to say the exact time
23 because we are not a jail. We are a temporary facility in terms
24 of someone who is in custody. There would be an estimation
25 perhaps when they would funnel through the system, but we

1 wouldn't have an exact time. But we could have some
2 approximation, perhaps. And that's the best I can answer.

3 BY MR. GARG:

4 Q Where such an approximation exists, if ICE asks an employee
5 under your supervision, a city employee, for that approximation,
6 would that employee be able to provide that to ICE?

7 A They would be given an estimate, at best.

8 Q As you understand city policy, can a city employee under
9 your supervision respond if that employee receives a request
10 from ICE asking about the whereabouts of a particular alien
11 being held in the City's law enforcement custody?

12 A As my understanding, they would typically make that direct
13 call to that facility. In our case, it would be a closed
14 circuit TV facility, in which case they would already know the
15 answer to that.

16 Q Let me try it a different way. As you understand city
17 policy, could a city employee respond if that employee under
18 your supervision receives a request from ICE asking for the
19 whereabouts of a particular alien who has been released from
20 city custody?

21 THE COURT: Has been released?

22 MR. GARG: Has already been released.

23 THE WITNESS: In terms of their whereabouts?

24 MR. GARG: Yes.

25 THE WITNESS: No. I guess they could not. If they've

1 already been released, we wouldn't know.

2 BY MR. GARG:

3 Q If a city employee did know the whereabouts -- let me lay
4 out a scenario for you. The city has arrested, detained
5 somebody, and that person has since been released, the City
6 knows where that person lives. They have a known address on
7 file. In that scenario, as you understand city policy, could a
8 city employee under your supervision respond if the employee
9 receives a request from ICE asking for the whereabouts of an
10 alien who has been released from the city's law enforcement
11 custody?

12 A Well, that broaches upon the subject of us getting involved
13 in immigration enforcement, and that's not what we do. If
14 they've already been released -- all the information leading up
15 to that point would be made available. But once they've been
16 released, it is no longer within our purview.

17 Q Have you advised city employees under your supervision that
18 they may in response to a request from ICE communicate
19 information regarding immigration status to ICE with respect to
20 any alien in the city's law enforcement custody?

21 A To the degree that we know that information and the arrest
22 processing, we don't have an issue with reporting that along for
23 arrestees. So the answer to that is yes.

24 Q Now, on direct examination you looked at a couple of city
25 policies. One was Executive Order 8-09. Do you still have that

1 in front of you?

2 A I can get it back in front of me. Yes.

3 Q I'll wait a moment for the Court. I just want to ask with
4 respect to Executive Order 8-09, have you advised city employees
5 under your supervision that they do not violate Executive Order
6 8-09 when they disclose information regarding immigration status
7 to ICE?

8 A Well, we're supposed to follow all city Executive Orders.
9 So the answer is yes, in terms of advising.

10 Q So I'm not sure I heard the answer to my question there.

11 A Okay.

12 Q Let me just ask it again to make sure. So I understand
13 you're saying that --

14 THE COURT: Well, you can point out a specific section
15 with this, that you think --

16 MR. GARG: Sure.

17 THE COURT: -- might apply.

18 BY MR. GARG:

19 Q So Section 3, for example, talking about confidentiality of
20 information. So have you advised city employees that they don't
21 violate Executive Order 8-09 when they disclose information
22 regarding immigration status to ICE?

23 A I'm sorry. You're going to have to repeat that.

24 Q Sure. I understand -- I think I heard you say that this is
25 an Executive Order, so obviously city employees are expected to

1 follow it. I appreciate that. What I'm asking is a little
2 different. Have you advised city employees that they do not
3 violate Executive Order 8-09 when they disclose information
4 regarding immigration status to ICE?

5 A Well, ultimately, being in compliance with this order and
6 any other order, anything that I push out from my office is
7 expected to be complied with. So we would take an Executive
8 Order and we would make sure that everyone understands all the
9 tenets in the order.

10 Q Okay. Do you understand Executive Order 8-09 not to
11 prohibit disclosing information regarding immigration status to
12 ICE?

13 A Yes. On -- let me qualify that, related to victims and
14 witnesses.

15 THE COURT: Related to what? I'm sorry.

16 THE WITNESS: Victims and witnesses.

17 BY MR. GARG:

18 Q Let me make sure I understand that. So as to victims and
19 witnesses, what is or is not allowed under Executive Order 8-09
20 with respect to disclosing information regarding immigration
21 status to ICE?

22 A The confidentiality of their identity.

23 Q And that is or is not allowed to be disclosed?

24 A It is not allowed to be disclosed.

25 Q We also talked about Police Commissioner Memorandum 01-06.

1 Do you have that in front of you still?

2 A No, but I can get it.

3 Q Have you advised city employees under your supervision that
4 they don't violate this memorandum, 01-06, when they disclose
5 information regarding immigration status to ICE?

6 A We have advised them that they are to follow the policy in
7 Memorandum 10-06 (sic) and all the tenets wherein.

8 Q Have you told city employees under your supervision that
9 the tenets of this Police Commissioner Memorandum 01-06 do not
10 prohibit them from disclosing information regarding immigration
11 status to ICE?

12 A As it relates to criminality and people arrested for
13 crimes.

14 Q Outside of criminality, have you advised city employees
15 under your supervision that Police Commissioner Memorandum 01-06
16 does not prohibit them from disclosing information regarding
17 immigration status to ICE?

18 A Only as it results or as it pertains to people who are
19 victims or witnesses. As it relates to people who are arrested
20 for crimes, they are allowed to disclose that information.

21 Q One more -- a little more general question. Have you in
22 any training or advice given to city employees under your
23 supervision mentioned the federal statute 8 U.S.C. 1373 that
24 bars policies that prohibit the sharing of information regarding
25 immigration status?

1 A Not specifically. We deal with this policy, this
2 memorandum, as well as the Executive Order that has been put out
3 by the Mayor's office.

4 Q So, staying on this Police Commissioner Memorandum 01-06,
5 is it your understanding that the memorandum allows transmitting
6 an alien's immigration status to federal authorities where that
7 alien is both a perpetrator of a crime and also a victim of a
8 crime?

9 A Well, I mean, if they are a perpetrator of a crime, then
10 that information can be conveyed. You'd have to give me a
11 specific example when they are both.

12 Q Supposing two individuals got into a physical encounter.
13 They both hit each other. They're both at fault. Both
14 committed a crime. You know, each one can say I'm both a
15 perpetrator and a victim.

16 In a scenario like that, does -- is it your
17 understanding that Police Commissioner Memorandum 01-06 allows
18 transmitting an alien's immigration status to federal
19 authorities where that alien is both a perpetrator of a crime
20 and a victim of a crime?

21 A Well, in my estimation, the hope would be that an
22 investigation would reveal which status that individual would
23 fall in. If they still continue to fall in both and they are
24 arrested, then in my estimation they would still be allowed to
25 transmit that information.

1 Q The understanding you just described, have you advised city
2 employees that they may, in response to a request from ICE,
3 communicate information regarding immigration status to ICE with
4 respect to such an alien who is both a perpetrator of a crime
5 and also a victim of a crime?

6 A Again, it comes to the notion of an individual being
7 charged with a crime. And once you are charged with a crime,
8 then that would allow that to happen.

9 Q Have you so advised city employees that regardless if the
10 person is also a victim of a crime, were they then a perpetrator
11 of a crime, that alien status can be communicated to ICE upon
12 request?

13 A Well, it would be simply because they would be processed as
14 a criminal in that case. Assuming that those were the
15 circumstances, yes.

16 Q And that advice has gone to your employees?

17 A This is what's in the memorandum related to people who are
18 arrested for crimes.

19 Q Outside of the text of the memorandum itself, has any
20 advice or training been given regarding this point about what
21 happens when the alien is both a perpetrator and a victim of a
22 crime?

23 A Not that I'm aware of, no.

24 Q I want to talk about one other city policy that I don't
25 believe you were asked about earlier. It is Executive Order

1 Number 5-16, and I'm happy to give you a copy of that, and hand
2 one to the Court. I think it may be in the plaintiff's binder
3 at P-4, if the Judge has that.

4 MR. GARG: May I approach?

5 THE COURT: Yes, sure.

6 MR. TULANTE: He has a copy in the binder, P-4.

7 MR. GARG: It's P-4 in your binder, if you have it.

8 BY MR. GARG:

9 Q Are you familiar with this Executive Order, sir?

10 A Not intimately, but I've seen it before.

11 Q Could I point you to Section 2, where it says, "The Police
12 Commissioner, among other officials, is hereby required to take
13 appropriate action to implement this order."?

14 A Yes.

15 Q Do you see that?

16 A I do.

17 Q I'd like to look at Section 1 of that order. And you're
18 welcome to read it. What I wanted to get at is I want to focus
19 on the portion of it, of Section 1 of Executive Order number
20 5-16, concerning notice of pending release. I want to focus on
21 that portion of it. And just to make sure we're all on the same
22 page, as you read it, do you understand that it's saying -- what
23 this order is saying is that under Section 1 of Executive Order
24 Number 5-16, city employees should not provide notice of the
25 pending release of an alien in city custody unless such person

1 is being released after conviction for a first or second degree
2 felony involving violence and ICE's request for notice is
3 supported by a judicial warrant. Is that what you understand
4 that to say?

5 A Yes.

6 Q In Section 1?

7 A Yes.

8 Q So a couple of questions about that. To your awareness,
9 are ICE requests for notice of an alien's pending release made
10 pursuant to administrative immigration warrants?

11 A I'm sorry. Say that again.

12 Q This section talks about a judicial warrant. Right?

13 A Right.

14 Q The notice needs to be supported by a judicial warrant.
15 Are ICE requests for notice of an alien's pending release made
16 pursuant to administrative immigration warrants, as distinct
17 from a judicial warrant, to your awareness?

18 A No.

19 Q In addition to first or second degree felonies, in
20 Pennsylvania are there third degree felonies?

21 A Yes.

22 Q Can you give us some examples of third degree felonies,
23 from your experience?

24 A There are different crimes. Aggravated assault could fall
25 into that. There are different statutes related to robbery and

1 other crimes. I don't profess to remember every one of them
2 now, but --

3 Q Sure. Let me see if I can offer some examples. Sale or
4 possession of child pornography. Is that a third degree felony?

5 A I don't know.

6 Q Promoting prostitution of a minor; third degree felony? Do
7 you know?

8 A It could be. I'm sure it's a felony. I don't know what
9 the degree is.

10 Q Sexual assault of a minor in a state institution?

11 A I'm not sure.

12 Q Terroristic threats?

13 A Could be.

14 Q Possession of an explosive device with an intent to use it
15 for arson?

16 MR. TULANTE: Your Honor, I think we get the point
17 here.

18 THE COURT: Well, it's not a question also --

19 MR. GARG: Sure.

20 THE COURT: He's not expected to have memorized the
21 category of crimes; nor are you, nor can I.

22 MR. GARG: Understood.

23 THE COURT: And, by the way, I don't know if you've
24 ever tried to count the number of federal judicial opinions on
25 the topic of what is aggravated assault and battery under

1 various state laws, but -- this is like a footnote to our
2 proceedings, but when the Supreme Court of the United States
3 came across the concept of a career offender in the sentencing
4 guidelines, this created a very -- a sort of small academic
5 bazaar, you might say, of opinions about what different type of
6 conduct qualified as aggravated assault and battery and whether
7 it could be considered a violent crime.

8 I'd just note that, that it's a very deeply divided
9 topic among judges. Go ahead.

10 MR. GARG: Sure.

11 BY MR. GARG:

12 Q And one more question, Commissioner Ross, and again not
13 trying to quiz you, but -- do you understand that a third degree
14 felony under Pennsylvania law can have a prison sentence up to
15 seven years?

16 A I don't profess to know that, whether it does or doesn't.

17 Q Sure. Moving on. Executive Order 8-09. I'm sorry. I've
18 jumped around on this. I meant to ask a question before and I
19 skipped over it. Do you have that one in front of you,
20 Executive Order 8-09? In your binder, it's P-2.

21 THE COURT: 8-09?

22 MR. GARG: Yes.

23 THE COURT: All right. I think you asked him about
24 that before.

25 MR. GARG: I did. And there was a question I meant to

1 get to that I skipped over by accident.

2 THE COURT: Go ahead. All right. We're back to 8-09.

3 Go ahead.

4 BY MR. GARG:

5 Q And in Section 2 there's a discussion in that Executive
6 Order 8-09 about when a city officer employee shall or shall not
7 inquire about a person's immigration status.

8 A Okay. What section was that again? I'm sorry.

9 Q Section 2.

10 A Section 2. And what subsection was it?

11 Q I'm actually not going to ask specifically about any
12 subsection.

13 A Okay.

14 Q I just wanted to get on the topic of it generally. And
15 you're welcome to refer to it, if you need to. Do you
16 understand that Executive Order 8-09 allows city employees under
17 your supervision to inquire with ICE about a person's
18 immigration status?

19 A It appears that that says -- to inquire about the
20 immigration status of crimes victims and witnesses? Is that the
21 statute that you're talking about or the section you're
22 referring to? Section 3?

23 Q That is among it. There's also Section 4 says you shall
24 not inquire regarding immigration status. Two says you shall
25 not inquire about a person's immigration status. So I think it

1 would be all of them.

2 A Correct.

3 Q So to repeat the question, do you understand that Executive
4 Order 8-09 allows city employees to inquire with ICE -- so here
5 the inquiry is going from a city employee to ICE, not from ICE
6 to the city employee? Do you understand that Executive Order
7 8-09 allows city employees under your supervision to inquire
8 with ICE about a person's immigration status?

9 A Actually, it says we shall not inquire about that status.

10 MR. GARG: Your Honor, may I --

11 THE COURT: Well, wait a minute. A -- so 2A applies
12 to -- does not apply to law enforcement officers. Right? So
13 Section B applies only to law enforcement officers. Correct?

14 MR. GARG: I'll let the City speak for what the
15 Executive Order means, but I think he --

16 THE COURT: Is that right, Commissioner?

17 THE WITNESS: That's correct, Your Honor.

18 THE COURT: All right. Okay. I just wanted to
19 clarify that. And then C says,

20 "Law enforcement officers shall continue to cooperate
21 with state and federal authorities in investigating
22 and apprehending individuals who are suspected of
23 criminal activity."

24 Is that correct?

25 THE WITNESS: That's correct, Your Honor.

1 THE COURT: All right. Next question.

2 MR. GARG: May I confer with my --

3 THE COURT: Of course.

4 MR. GARG: -- colleague?

5 (Pause)

6 MR. GARG: Nothing further. Thank you very much,
7 Commissioner.

8 THE COURT: I have a couple questions and then either
9 of you can ask other questions.

10 When an individual is arrested, for a felony for sure
11 as we discussed, they go to the Central -- is it still a
12 roundhouse that's being used for that purpose, where the person
13 goes for a felony to be fingerprinted and photographed or does
14 it depend?

15 THE WITNESS: Most cases, Your Honor, they're going to
16 a CCTV location, one of the visual headquarters.

17 THE COURT: Okay. So it can be one of the district
18 police stations?

19 THE WITNESS: In most likelihood, it would be.

20 THE COURT: But they would be photographed and
21 fingerprinted at the police station?

22 THE WITNESS: Correct.

23 THE COURT: Is that correct? All right. Now, would
24 that apply for someone who's arrested for a misdemeanor?

25 THE WITNESS: Yes, in many cases.

1 THE COURT: Okay. And how about just given a summons
2 for a traffic offense?

3 THE WITNESS: No. There would have to be some
4 extenuating circumstances for a summary, the need to be printed.

5 THE COURT: All right.

6 THE WITNESS: Usually you would not have some
7 identification or something like that.

8 THE COURT: All right. They don't have
9 identification. All right. Now, when someone is questioned --
10 is arrested, they're requested to give their name. Correct?

11 THE WITNESS: Yes.

12 THE COURT: And they're requested to give an address?

13 THE WITNESS: Correct.

14 THE COURT: All right. Are they asked about their
15 citizenship status at all?

16 THE WITNESS: They are not.

17 THE COURT: So no question whether you're a citizen.
18 Is that correct?

19 THE WITNESS: Your Honor, no.

20 THE COURT: Are they asked where they --

21 THE WITNESS: There is no block to ask that question.

22 THE COURT: -- where they've been born? Where they
23 were born?

24 THE WITNESS: Typically, they -- they may ask that
25 question, right, where they were born.

1 THE COURT: All right. If they're born in the United
2 States, your office would know they're citizens. Correct?

3 THE WITNESS: Correct.

4 THE COURT: But if they give a birthplace of some
5 foreign country, they may or may not be citizens. Is that
6 correct?

7 THE WITNESS: Correct.

8 THE COURT: Now if they do give a foreign country as a
9 place of birth, are there any further questions asked about
10 whether they're citizens or not?

11 THE WITNESS: Not systematically, no, there are not.

12 THE COURT: Are they asked a question about their
13 immigration status?

14 THE WITNESS: Absolutely not.

15 THE COURT: All right. Okay. Now, one question about
16 -- you were asked about the Executive Order 5-16, and this
17 applies to you and the prison commissioner, as well. So my
18 question is only related to the police department. But it
19 indicates, Section 1, as follows,

20 "No person in the custody of the City who otherwise
21 would be released from custody shall be detained
22 pursuant to an ICE civil immigration detainer request
23 pursuant to 8 CFR 287.7."

24 I'm going to stop there. Do you know what that is,
25 what that regulation provides? As you sit here, do you know

1 what that is?

2 THE WITNESS: Well, Your Honor, my understanding is
3 that absent a judicial criminal warrant, we would not detain
4 that individual.

5 THE COURT: Okay. But do you know what is meant by an
6 "ICE civil immigration detainer"?

7 THE WITNESS: That to me is an administrative
8 detainer, and it doesn't rise to the level of giving us the
9 ability to detain that person beyond anything additional --

10 THE COURT: Okay. Now, let me move to -- read the
11 rest of this.

12 "Nor shall notice of his or her pending release be
13 provided, unless such person is being released after
14 conviction for a first or second degree felony
15 involving violence and the detainer is supported by a
16 judicial warrant."

17 Is that correct?

18 THE WITNESS: That's correct.

19 THE COURT: So you're currently enforcing that
20 provision?

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: All right. Now I'm focusing on the word
23 "and" -- A-N-D -- in the prior sentence that I just read, which
24 means that -- to me, that there has to be both a conviction for
25 first or second degree felony involving violence and the

1 detainer supported by a judicial warrant. Is that correct?

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: All right. Now, there's a subsequent
4 memorandum that the City attached to its papers that is dated
5 March 22, 2017. Is this one of your exhibits, Mr. Tulante?

6 MR. TULANTE: That's P-5.

7 THE COURT: What?

8 MR. TULANTE: That's P-5.

9 THE COURT: All right. Could you look at P-5 for a
10 minute, please? All right. Are you familiar with this,
11 Commissioner?

12 THE WITNESS: I haven't found it yet, Your Honor.

13 THE COURT: All right. Take your time.

14 THE WITNESS: Exhibit 5?

15 THE COURT: Yes. It's from Brian Abernathy, who I
16 understand is going to be the next witness, to Blanche Carney,
17 Prisons Commissioner, with a copy to Mr. Tulante, dated March
18 22, 2017, entitled "Cooperation with Federal Law Enforcement and
19 Criminal Warrants."

20 THE WITNESS: I have it, Your Honor.

21 THE COURT: Okay. Could you read it to yourself,
22 please?

23 THE WITNESS: Sure.

24 (Pause.)

25 THE WITNESS: Okay, Your Honor.

1 THE COURT: Okay. Are you familiar with this?

2 THE WITNESS: No, I'm not.

3 THE COURT: Okay. All right. Is Mr. Abernathy going
4 to be familiar with this, Mr. Tulante?

5 MR. TULANTE: I hope so, yes, he will.

6 THE COURT: All right. Well, let me just ask the
7 Commissioner --

8 MR. TULANTE: He will, Your Honor.

9 THE COURT: What this implies to me -- and I just want
10 to know if you agree or not with this -- is that this clarifies
11 that the City's policy is that if there is a judicial warrant,
12 then there's not -- there's no need to show a conviction of a
13 first or second degree felony; that a judicial warrant alone
14 would warrant giving ICE information about the status of a
15 person in the city prisons or in the police department. Would
16 you agree with that?

17 THE WITNESS: I would agree with that, Your Honor.

18 THE COURT: All right.

19 Do you have any further questions?

20 MR. GARG: I'd just like to ask one thing to make
21 sure.

22 CROSS-EXAMINATION - CONTINUED

23 BY MR. GARG:

24 Q This Exhibit P-5 that we're talking about, the March 22,
25 2017 memorandum from Brian Abernathy to Blanche Carney, this is

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1 a document you, prior to today, were not familiar with; is that
2 correct?

3 A No, because I don't deal with the jails, so --

4 Q Thank you.

5 MR. GARG: Nothing further.

6 THE COURT: All right. Mr. Tulante, any questions?

7 MR. TULANTE: Brief redirect. May I proceed, Your
8 Honor?

9 THE COURT: Yes.

10 REDIRECT EXAMINATION

11 BY MR. TULANTE:

12 Q Commissioner Ross, does the police department have any
13 databases with immigration status information?

14 A Immigration status information?

15 Q Exactly. That somebody is here illegally or --

16 A No, we don't maintain that.

17 Q And does the police department collect such information?

18 A No, we don't.

19 Q And with respect to 1373, had there been any issue with
20 respect to Executive Order 08-09 and the police memorandum --

21 A None that I'm aware of.

22 Q Have the federal government prior -- previously advised
23 that the City is violating federal law in any way?

24 A Absolutely not.

25 Q And explain -- we talked a little about the detainer

1 policy. Does the police -- under what circumstances, if any,
2 does the police department receive a detainer notification
3 request from ICE?

4 A Well, if they -- upon arrest, and ICE had information about
5 any person in our custody, they would attempt to lodge a
6 detainer for that person. But absent a judicial criminal
7 warrant, we would not comply with that.

8 Q And how about --

9 THE COURT: Well, wait. Excuse me. Isn't there a
10 nationwide database of --

11 THE WITNESS: There are nationwide databases, Your
12 Honor, where --

13 THE COURT: So if a person who is an individual, once
14 they're fingerprinted and photographed, if there is any detainer
15 for them, whether it's from Alaska or ICE in Philadelphia, it
16 would show up in this database; is that correct?

17 THE WITNESS: Yeah, for -- yes, it would, Your Honor.

18 THE COURT: All right. Go ahead.

19 BY MR. TULANTE:

20 Q And as far as you know, in terms of the vast majority of
21 detainer requests, to whom are they directed? From ICE. The
22 prisons or police?

23 A Prisons.

24 Q And typically how long do you hold someone once they --
25 you've taken them from the street, arrested them, before they're

1 either -- they go to court, they're released or they go to
2 prison?

3 A It's hard to say. I mean, it could be 12, 18 hours. It
4 could be a little bit longer. But it would be case by case, and
5 when they were able to see the magistrate and the judge, and
6 then would be determined by the crime they committed and whether
7 they could make bail or anything like that.

8 Q And are you aware of anything that prohibits ICE from -- if
9 they lodged a detainer request at the precinct, the police
10 department, and that person is then transferred to prisons, from
11 sending that same request to the prisons?

12 A No, I'm not.

13 THE COURT: Well, the prison would have access to the
14 same database that you do; doesn't it?

15 THE WITNESS: Yes, I believe so.

16 THE COURT: Just so the record's clear, the police
17 department, when an officer arrests somebody, you hold them in
18 custody until they appear before a judicial officer who is
19 usually a magistrate or a district judge; is that right?

20 THE WITNESS: That's correct.

21 THE COURT: Okay. And that -- so if bail is
22 authorized and there's no detainer, the individual would be
23 released, right?

24 THE WITNESS: You're right.

25 THE COURT: If they make bail.

1 THE WITNESS: Correct, Your Honor.

2 THE COURT: If they don't make bail, then they'll go
3 to the detention center or Holmesburg or city prison, right?

4 THE WITNESS: Correct.

5 THE COURT: So you don't keep people after -- and if
6 the magistrate judge sets bail, but there's a detainer, then
7 they go to the prison anyway because of the detainer. Is that
8 right?

9 THE WITNESS: That would be correct.

10 THE COURT: And that's correct whether it's an ICE
11 detainer or it's a detainer from Montgomery County or from
12 Alaska; is that right?

13 MR. TULANTE: Your Honor, I think we're --

14 THE COURT: What?

15 MR. TULANTE: I was going to direct these questions to
16 Mr. Abernathy in terms of the prisons --

17 THE COURT: All right. Well, I just want to make sure
18 that the Commissioner is confident with that --

19 THE WITNESS: I am, Your Honor.

20 THE COURT: -- set of facts.

21 THE WITNESS: I am.

22 THE COURT: Okay. All right. Thank you very much.

23 BY MR. TULANTE:

24 Q And I think, just to be clear, to follow up with Judge
25 Baylson's set of questions, once someone appears in court and

1 there's a court proceeding, there are no circumstances under
2 which they go back to the police custody; is that right?

3 A No, not in that circumstance, no.

4 Q Irrespective of whether there's bail granted and so forth.

5 A You're correct.

6 Q I know counsel had asked you a set of questions about
7 Executive Order 8-09 and Police Memorandum -- that's P-2, and
8 Police Memorandum 01-06. Just to be clear, do you ask your
9 officers to follow these policies?

10 A I do.

11 Q As written?

12 A Yes.

13 MR. TULANTE: Your Honor, I have no further questions.

14 THE COURT: All right. Mr. Garg, any questions?

15 MR. GARG: Nothing further, Your Honor. Thank you.

16 THE COURT: All right. Thank you, Commissioner.

17 THE WITNESS: Thank you, Commissioner.

18 THE COURT: Okay. We'll take a ten-minute recess
19 before the next witness. Thank you.

20 MR. TULANTE: Your Honor, may the Commissioner be
21 released?

22 THE COURT: Yes. Yes. You're excused. Thank you for
23 coming in.

24 THE WITNESS: Thank you.

25 (Recess is taken from 10:48 a.m. until 11:02 a.m.)

THE COURT: Okay. Call on your next witness.

Please be seated.

Mr. Tulante, I think you want to --

MR. TULANTE: Your Honor, the City calls Brian
Abernathy.

THE COURT: Okay.

(BRIAN ABERNATHY, Witness, is Sworn)

DEPUTY CLERK: Thank you. Please state your full name
and spell your last name for the record.

THE WITNESS: Brian Abernathy, A-B-E-R-N-A-T-H-Y.

MR. TULANTE: Your Honor, may I proceed?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. TULANTE:

Q Good morning.

A Good morning.

Q Sir, where do you work?

A I work for the City of Philadelphia.

Q And what do you do for the City of Philadelphia?

A I'm the first deputy managing director.

Q And I'm going to have you slow down.

A Yes, sir.

Q And how long have you been the first deputy managing
director?

A I was appointed in January of 2015.

1 Q Can you please describe for Judge Baylson some of your
2 responsibilities as the first deputy managing director?

3 A Yes, sir. So as part of my role, I oversee the day-to-day
4 operations of the City. So while the director handles primarily
5 large strategic initiatives and policy, the day-to-day concerns,
6 political issues, budgetary issues. Operational issues will
7 come to me directly, that includes direct reports of the police
8 department, prisons, fire department, emergency management.

9 I do things like I have incident command of our
10 special events including the DNC and NFL draft. I have broad
11 policy responsibilities, including the Office of Immigrant
12 Affairs and work on specific issues like opioids and
13 homelessness and -- and as all -- part of that is getting out
14 into the community as well, interacting and engaging with the
15 immigrant community, with residents on homelessness within --
16 within the opioid epidemic as well.

17 Q Okay. Who is the prisons commissioner?

18 A Commissioner Blanche Carney operates prisons.

19 Q And what about the police commissioner?

20 A Commissioner Richard Ross.

21 Q And you mentioned the Office of Immigrant Affairs. Who is
22 the executive director?

23 A Miriam Enriquez.

24 Q Could you explain -- give us a brief background of any
25 other roles that you've had in City government.

1 A Certainly. Immediately prior to this position, I was the
2 executive director of the Philadelphia Redevelopment Authority.
3 Prior to that, I was the chief of staff to Managing Director
4 Negrón in the Nutter administration, and prior to that, I was
5 the legislative assistant and policy director for Councilman
6 Frank DiCicco.

7 Q Sir, did you prepare a declaration as part of the City's
8 motion for preliminary injunction?

9 A Yes, I did.

10 Q I want to --

11 THE COURT: Yes, I've read it. So I assume you're --
12 you won't go over all of that?

13 MR. TULANTE: No, no. I want him --

14 THE COURT: That speaks for itself.

15 MR. TULANTE: There's some corrections and updates, so
16 I want to make sure that --

17 THE COURT: Go ahead.

18 MR. TULANTE: -- he does that for the record.

19 BY MR. TULANTE:

20 Q If you would turn to P-3 in the binder in front of you.

21 A Yes, sir.

22 Q Is this your declaration?

23 A Yes, sir.

24 Q Are there any corrections or updates that you wish to make
25 to your declaration?

1 A Yes. A correction is in paragraph 10. I state "since
2 December 2014," that should say since December 2015. I would
3 also like to update the current prison population, which is as
4 of this morning, 6833. The percentages that are contained are
5 roughly the same.

6 Q 6833 meaning that's the -- as of today, the population --

7 A The --

8 THE COURT: And what paragraph are you in now?

9 THE WITNESS: I'm sorry, sir. Paragraph six towards
10 the end of the page, "across these six facilities" --

11 THE COURT: Yeah.

12 THE WITNESS: -- is 6833."

13 THE COURT: So what's the number?

14 THE WITNESS: The population this morning was 6833.

15 THE COURT: Okay. And how about the number of
16 detainees?

17 THE WITNESS: So it -- there are still 83 percent of
18 the inmates within a pretrial posture.

19 THE COURT: Okay. Thank you.

20 BY MR. TULANTE:

21 Q And do you have any update in paragraph 10 with respect to
22 the number of detainer requests?

23 A Oh, yes, sir. Thank you. There is 140 requests as of
24 last --

25 THE COURT: One-four-zero?

THE WITNESS: One-four-zero as of last Friday.

BY MR. TULANTE:

Q Are there any other corrections you wish to make?

A No, sir.

Q Can you please describe some of the ways in which the City shares information with federal law enforcement? Let me start with are you familiar with something called PARS?

A Yes, sir. It's the pre -- I'm sorry, preliminary arraignment reporting system.

Q And how are you familiar with it?

A As part of my role working with both the criminal justice agencies and direct contact with both the First Judicial District, the District Attorney's Office, and the police department.

Q And what is PARS?

A It is exactly what it sounds like. It is our preliminary arraignment system that is co-owned by the three agencies, the City, FJD, First Judicial District, and the District Attorney's Office. It is the information-sharing system that is used for real-time updates of what's happening in a case.

Q And who enters that information?

A Police officers do the initial entry upon -- upon arrest.

Q And does the City include immigration status in its entries about individuals as part of PARS?

A No.

1 Q And other than the police, the DA, and the court system,
2 who else has access to the information about individuals in
3 PARS?

4 A The Defender's Association also has access, as well as a
5 number of federal law enforcement officials --

6 Q Does that --

7 A -- or agencies.

8 Q Does that include ICE?

9 A Yes.

10 Q And is it free for ICE or does ICE have to pay for it?

11 A ICE pays a licensing fee under MOU.

12 Q And how long -- are you aware of how long ICE has had this
13 access?

14 A A number of years. I don't know when it first was granted.

15 Q And what is the benefit to law enforcement agencies,
16 including ICE, in having access to the information in PARS?

17 A It provides, again, real-time information about what is
18 happening with specific cases and specific individuals.

19 Q Does ICE have access to victim or witness information in
20 PARS?

21 A No. They signed a specific MOU that restricted that
22 access. Clearly, the City, at the time, had concerns about
23 providing victim and witness information, and ICE made it clear
24 that they weren't interested in that information.

25 Q And let's talk about the next set of data sharing. Are you

1 familiar with something called AFIS?

2 A Yes, generally so.

3 Q So when -- and how are you familiar with it?

4 A Again, with my work with the police department, the First
5 Judicial District of the District Attorney's Office.

6 Q When someone is arrested by the Philadelphia Police
7 Department, are you familiar with what the police do with the
8 person's fingerprints?

9 A Generally, yes. Upon -- upon booking, fingerprints are
10 taken. That information is loaded into AFIS. AFIS information
11 is then uploaded into the state system, that state system
12 integrates with federal -- federal information.

13 Q And why do the police use AFIS?

14 A To identify -- identify individuals who may be wanted in
15 another state or wanted by federal government.

16 Q And what happens to the fingerprint data once it goes up to
17 the state and so forth?

18 A It is shared amongst all law enforcement officials across
19 the country is my understanding, and including ICE, which we
20 know ICE on their own website, and it's that they -- they
21 generate their detainers from biometric data that -- that local
22 law enforcement shares through our national -- or through our
23 national partnerships.

24 Q What do you mean "generate the detainers"?

25 A Generate detainer requests for local -- for local

1 jurisdictions.

2 Q And it's your testimony is that's how ICE knows who is in
3 local custody?

4 A That's what ICE's website says.

5 Q Okay. And let's move to NCIC. Are you familiar with NCIC?

6 A Generally speaking, as part of my role working with the
7 police department and the criminal justice system.

8 Q And what is NCIC?

9 A It is a database of -- of information, demographic
10 information and biographic information. When an officer
11 interacts with an individual suspected of a crime, he enters
12 that name into NCIC to understand if that individual is wanted
13 in another jurisdiction. Assuming that there is an ID present,
14 he also enters the biological information that he has present
15 into NCIC.

16 Q And I want to switch gears a little bit. What is the --
17 your relationship with ICE?

18 A I think it's a professional, cooperative relationship. We
19 certainly have our disagreements, but I think I personally feel
20 like I have a professional relationship with Director Ritchey,
21 and the Department itself has a relationship with Homeland
22 Security Investigation and works with them on a regular basis.

23 Q In paragraph -- actually, let me switch gears a little bit.

24 If you go -- before you there is a document; it
25 identifies as Exhibit P-2. And for the record, again, that's

1 Executive Order Number 809. Are you familiar with it?

2 A Yes, sir.

3 Q And do you see a section --

4 MR. TULANTE: Your Honor, may I have a moment?

5 BY MR. TULANTE:

6 Q It would be section two regarding inquiries regarding
7 immigration status. Do you see that?

8 A Yes, sir.

9 Q Does the confidentiality order -- this is where I'm
10 referring to P-2. Does it prohibit City employees from
11 requesting information regarding immigration status from federal
12 immigration officials, including ICE?

13 A No, it does not.

14 Q So another way of putting it, if a City official or
15 employee calls ICE to request immigration, citizenship, status
16 information, would that official be violating the
17 confidentiality order?

18 A No, it would not, although I don't know of any reason why
19 they would need to request that information.

20 Q In paragraph seven of your declaration, again, your
21 declaration is P-3, you described that through the Department of
22 Prisons put in place a new consent form in May 2017 for inmates
23 whom ICE seeks to interview. Do you see that?

24 A Yes, sir.

25 Q Why was that policy put in place?

1 A It came to our attention in the spring that ICE had been --
2 had been making requests directly to wardens to gain access
3 to -- to the prisons and to interview inmates. When that --
4 when we became aware of that, a number of concerns were raised
5 by both the advocate community and within -- within the
6 administration itself, and the desire, quite frankly, from --
7 from some in the advocate community was to -- to not allow ICE
8 onto our campus at all.

9 We value the law enforcement relationship we have with
10 the -- with the organization and with the agency, and so, an
11 outright bar didn't seem appropriate. Having said that, given
12 that they are investigating primarily civil offenses, and given,
13 really, the importance of maintaining the relationship with our
14 advocate community and with the immigrant community, we felt
15 it -- felt it prudent to make sure folks understood their rights
16 when dealing with ICE officials.

17 Q And has ICE -- has ICE asked to interview any inmates since
18 the consent form was implemented in May 2017?

19 A To my knowledge, they've made three requests.

20 Q And what's been the result of those requests?

21 A Two inmates declined to be interviewed, a third agreed to
22 be interviewed with an attorney present. At that point, ICE
23 declined to move forward with the interview.

24 Q I want to direct your attention to P-4, and for the record,
25 that is the Executive Order No. 516, titled Policy Regarding US

1 Immigration and Customs Enforcement Agency Detainer Request. Do
2 you see that?

3 A Yes, sir.

4 Q Are you familiar with it?

5 A Yes, sir.

6 Q In paragraph eight of your declaration, you said that the
7 City, including this policy, has a policy on responding to
8 detainer requests. And you testified that the requests are
9 honored if a federal judicial warrant accompanies that request;
10 is that correct?

11 A Yes, sir.

12 Q Explain that. Explain the reason behind that.

13 A Again, the overarching -- all of the overarching policies
14 are to maintain relationships with the immigrant community.
15 We -- when detainer requests come in, there's a practical --
16 there's a practical portion here. You know, 80 percent,
17 roughly, of our inmates aren't serving sentences. It is -- it
18 is nearly impossible to try and detain folks when a judge orders
19 them to be released.

20 When a judge orders bail, when a judge -- when someone
21 is found innocent or not guilty in a court of law, when there's
22 a mistrial and we have received a judge's order to release that
23 individual, we're going to honor -- we're going to honor that --
24 that judicial order. You know, a very small portion of our
25 population would be -- would be held otherwise.

1 Q Well, let's talk about notification. If you see section
2 one of the executive order, and if I could just read it in.

3 "No person in the custody of the City who otherwise
4 would be released from custody shall be detained
5 pursuant to an ICE Civil Immigration detainer request
6 pursuant to 8 C.F.R. 287.7, nor shall notice of
7 his/her pending release be provided unless its person
8 is being released after conviction for a first or
9 second-degree felony involving violence and a detainer
10 supported by a judicial warrant."

11 I'm going to focus on the notice. There's a portion
12 there that says notice won't be provided unless there's a
13 judicial warrant and there's been a prior conviction for a first
14 or second-degree felony involving violence. Not talking about
15 the first or second-degree violence. Is that the current
16 practice in the prisons?

17 A If the prisons receives a judicial warrant, no matter what
18 the charge, they will honor that judicial warrant.

19 Q And by judicial warrant, what type of warrant? Here, it
20 says ICE Civil Immigration detainer request. What if it's a --
21 what if it's an Immigration Administrative warrant?

22 A If it is a warrant signed by a judge, we will honor that
23 warrant.

24 Q And have you made any clarification regarding the issue of
25 first or second-degree felony?

1 A Yes. I issued a memo to the prison's commissioner, I
2 believe, in March of last year.

3 Q Can you turn to P-5?

4 A March of this year. I apologize. Clarifying that any
5 warrant received, no matter what the charge, should be -- should
6 be honored.

7 Q And why was that memo promulgated?

8 A There was some confusion based on the language in the
9 executive order. We -- it is not appropriate for us to deny a
10 judge's order given -- given charges.

11 Q Talk a little bit about, sort of, the practicalities of
12 providing notice to ICE. In other words, if ICE comes in and
13 they ask for 48-hour notice or as soon as practicable, explain
14 the way the prisons operate how that would actually work if
15 you -- even if you wanted to give notice?

16 A Again, 80 percent of our -- of our inmates are not
17 sentenced. They're in -- in some sort --

18 THE COURT: Are not sentenced?

19 THE WITNESS: Are not sentenced.

20 THE COURT: All right. That's throughout the whole
21 city prison?

22 THE WITNESS: Yes, that's surrounding the entire
23 system. And so, often times an inmate may be released from
24 court and not actually be -- be delivered back to State Road.
25 We're actually -- we're trying to push -- push that, and even if

1 a release order is made from court and the inmate travels --
2 they're traveling to State Road, it -- figuring --

3 THE COURT: You're using the term State Road because
4 that's where the prison is located?

5 THE WITNESS: Because that's where the prison is.
6 Yes, sir. I apologize.

7 THE COURT: That's -- no, that's okay.

8 THE WITNESS: That that practical reality, that
9 operational reality of trying to be able to translate between
10 the court, the sheriff, and then the prison facility is
11 difficult to say the least, and it would require a complete
12 operational change in how we do things, not to mention
13 additional pressure from -- from the judicial system in the past
14 about making sure we have a timely release once an order is
15 received. Generally speaking, we try to release folks within
16 four hours of receiving an order, whether that's by -- no matter
17 what that order -- what that order is.

18 And so, a notification to ICE, from my understanding,
19 even if -- even if we wanted to, I'm not certain that an agent
20 would be able to make it to the facility in time to -- to honor
21 that request, so it -- just from a very practical standpoint,
22 from a very operational standpoint, it would -- it would require
23 us to change our operations in a very -- a very real way.

24 Q And how many -- again, just to be clear, for the record,
25 how many of your inmates would have scheduled release dates?

1 A There are approximately 17 percent that would have
2 scheduled release dates. Those are individuals that are
3 sentenced.

4 Q And the other 83 percent, how do you -- let's say they are
5 to be released. How do you -- when do they get released? How
6 do you know when they're to be released?

7 A We receive a court order telling us to release them.

8 Q And do you -- does that court order allow you to hold them
9 beyond the release?

10 A No. No, the court's generally get very upset if we -- if
11 we hold them for more than a few hours.

12 Q Can you -- we've -- we've heard the word "detainer" a lot.

13 THE COURT: How -- how many -- can you estimate, is
14 there any approximation of the number of inmates for whom you
15 get a -- a release order from a judge on a daily basis or a
16 weekly basis? Is there any way you can quantify that?

17 THE WITNESS: I can't sit here today and quantify it,
18 but I can certainly provide it to counsel at a later time.

19 THE COURT: Okay.

20 All right. Go ahead.

21 BY MR. TULANTE:

22 Q Let's talk about the -- we've heard the term "detainers."
23 Other than sort of ICE civil detainers, does the Philadelphia
24 Department of Prisons receive other forms of detainers?

25 A Yes, sir, they do.

1 Q And what forms of detainers are those?

2 A They receive criminal detainers from other jurisdictions.

3 Q And what are -- what are criminal detainers?

4 A They are detainers where the inmate may be wanted for a
5 crime in another jurisdiction.

6 Q And what's the distinction between an ICE civil detainer
7 and a criminal detainer that you just referred to?

8 A Again, I think ICE's civil detainer is one that we would
9 not -- we would not honor. A criminal detainer allows us to
10 maintain and hold that person in custody, and then transfer that
11 custody to the jurisdiction upon pickup; whereas, an ICE civil
12 detainer, from my understanding of this -- of this jurisdiction,
13 we just -- to hold someone for civil charges, we feel would
14 violate their rights.

15 Q Let me turn to Exhibit P-6, and do you have it front of you
16 in the binder before you?

17 MR. TULANTE: And for the record, Your Honor, this is
18 a sample of an immigration detainer.

19 THE COURT: Right.

20 MR. TULANTE: It's a form -- DHS Form I-247A.

21 BY MR. TULANTE:

22 Q Do you recognize it?

23 A Yes, sir.

24 Q And what is it?

25 A It is a sample of an immigration detainer notice of action.

1 Q And of the approximately 140 of these you received, how
2 many of them have been accompanied by a criminal judicial
3 warrant?

4 A I believe there have been five. Four, I apologize.

5 Q And -- and of those, have you provided -- what has happened
6 with the -- with the inmates for whom the detainer requests were
7 submitted?

8 A Each of those inmates are still in custody.

9 Q And have -- has any notice been provided with respect to
10 those inmates?

11 A There's no notice required, because, again, they're still
12 in local custody. We wouldn't --

13 THE COURT: Do you receive this document from time to
14 time? Does the prison receive this from time to time?

15 THE WITNESS: Yes, they do.

16 THE COURT: Do you give it to the -- if you have the
17 prisoner in your custody, do you give it to the prisoner?

18 THE WITNESS: No, we do not.

19 THE COURT: What do you do with it?

20 THE WITNESS: It is filed.

21 THE COURT: It's filed?

22 THE WITNESS: It's filed and maintained.

23 THE COURT: What does that mean? Just put in a
24 folder? The first -- is there a folder for each --

25 THE WITNESS: Yes.

1 THE COURT: -- prisoner?

2 THE WITNESS: There's a folder for each prisoner.

3 THE COURT: An electronic folder or a paper folder?

4 THE WITNESS: Paper. There's both --

5 THE COURT: There's both?

6 THE WITNESS: -- to be fair.

7 THE COURT: So this would be just put in the folder?

8 THE WITNESS: It would be put in the folder upon -- if
9 that prisoner was ordered to be released, this paperwork would
10 be pulled out, and upon -- before it's released, it's actually
11 sent to me for final approval.

12 THE COURT: Well, wait a minute. What does that mean?
13 I mean, you -- do you still --

14 THE WITNESS: I see --

15 THE COURT: Would you give it to the prisoner as
16 he/she is about to be released?

17 THE WITNESS: No, sir, we would not.

18 THE COURT: Would you keep it if -- once you --

19 THE WITNESS: It's -- it's --

20 THE COURT: -- when they're released?

21 THE WITNESS: Yes, sir. We would keep in their -- and
22 when -- in their file, in case they were to re-enter -- re-enter
23 the facility.

24 THE COURT: How long -- how long do you keep these
25 files?

1 THE WITNESS: To -- I don't know is the honest answer.

2 THE COURT: All right. Go ahead.

3 BY MR. TULANTE:

4 Q Actually, can you walk the Court through what happens from
5 the time of receipt, you know, just the procedure steps when you
6 get -- the prison is going to detain --

7 THE COURT: Of this form?

8 MR. TULANTE: Yes.

9 THE COURT: Or a criminal detainer?

10 MR. TULANTE: No, this form.

11 THE COURT: Okay.

12 BY MR. TULANTE:

13 Q It's a P-6. The example of P-6.

14 A Sure. So this form would be delivered to the commissioner
15 directly. So no matter what facility it would be delivered to,
16 it would be advanced to the commissioner's office, and the form
17 itself would be filed within -- within the prisoner's -- within
18 the prisoner's file, as well as they would be marked within the
19 prison's computer system so that they would recognize that a
20 detainer had been filed. And further, it would be recognized
21 that the detainer had been filed either accompanied with a
22 judicial warrant or not accompanied by a judicial warrant.

23 Every -- that is the names of those individuals, as
24 well as any details relating to their charges, where they are
25 being housed. And the disposition of their case is updated on a

1 spreadsheet which is sent to me on a weekly basis.

2 Q And are you familiar -- I know we talked about prisons, are
3 you familiar with the -- if ICE sends detainer requests to
4 police departments, police precincts?

5 A I have heard of one case in my tenure where they have sent
6 a detainer to a police -- a police district, but it -- from a
7 practical standpoint, there's no reason for ICE to send it to
8 the police district. The police --

9 Q Why is that?

10 A The police hold an individual for a very limited time
11 before that individual is transferred to the Philadelphia Prison
12 System. And both in my conversations with the police department
13 as well as my conversation with ICE, there is not a -- there is
14 no practical reason for them to be sending a detainer to -- to a
15 police district.

16 Q And you said since your tenure, that's since January 2016?

17 A Yes, sir.

18 Q Let me switch --

19 THE COURT: And what -- are you familiar personally
20 with any -- with their -- with this document being accompanied
21 by a judicial warrant?

22 THE WITNESS: Yes. On a handful of times, less than
23 ten.

24 BY MR. TULANTE:

25 Q And when it is accompanied by -- tell us what -- what the

1 prisons receives in those instances.

2 A If it's accompanied with a warrant?

3 Q Yeah.

4 A So we -- we would receive this form, and to be -- and to be
5 fair, at times, we do receive an administrative warrant with
6 this form as well, and I would say especially within the last 12
7 months we've received administrative warrants with this form.
8 Judicial warrants, at times, will come, and, again, that
9 judicial warrant is filed. Upon -- upon release, if the
10 judicial warrant was filed, we would notify -- we would notify
11 ICE and --

12 THE COURT: Who signs an administrative warrant, if
13 you -- if you know?

14 THE WITNESS: It would be an ICE agent.

15 THE COURT: An ICE agent?

16 THE WITNESS: Yes, sir.

17 THE COURT: How about -- do you -- are you familiar
18 with the title immigration judge?

19 THE WITNESS: Yes, sir. There have been a handful of
20 warrants that have been signed by immigration judges as well.

21 THE COURT: Okay. So what do you understand their
22 role is in the immigration and deportation process?

23 THE WITNESS: My understanding is that they -- they
24 judge civil offenses as well, and to that end, we -- we would
25 not honor -- honor that warrant.

1 THE COURT: So if -- so if it was an administrative --
2 well, suppose an administrative judge -- well, you don't -- do
3 you -- do you consider those judicial warrants or not?

4 THE WITNESS: No, we do not.

5 THE COURT: Okay.

6 BY MR. TULANTE:

7 Q Just to be clear, when you say judicial warrant, what --
8 what types of warrants are you referring to?

9 A I'm referring to judicial criminal warrants; warrants where
10 the individual would be charged with a crime.

11 THE COURT: Well, and what about parole violators?
12 Are you familiar -- if you're not familiar with something I ask
13 about, just say you don't know.

14 THE WITNESS: Uh-huh.

15 THE COURT: I mean Mr. Tulante can supplement the
16 record if it's relevant. But you're familiar that sometimes an
17 individual is arrested is on parole --

18 THE WITNESS: Uh-huh.

19 THE COURT: -- it could be state parole, it could be
20 federal, what we call, supervised release; it's the same thing,
21 and are you aware -- do you have a policy about -- that means
22 the individual has been convicted of a crime, but at the moment,
23 they're being charged with parole violations.

24 THE WITNESS: Yes, sir.

25 THE COURT: If it's signed by a judge, you would honor

1 it, I assume?

2 THE WITNESS: Yes, sir.

3 THE COURT: Go ahead.

4 BY MR. TULANTE:

5 Q Yeah. Let me give you an example, so I'm not the -- if
6 there is an individual who had been previously convicted in
7 federal court on supervised release and they come back, and as
8 part of their coming back is violating a supervised release in
9 addition to violating illegal re-entry and Judge Baylson issued
10 a warrant, a criminal warrant to bring that person in for arrest
11 for violating supervised release, is that warrant -- would the
12 prisons honor that warrant?

13 A Yes, sir.

14 MR. TULANTE: I think that was the scenario Your Honor
15 was just --

16 THE COURT: Yeah. It's okay.

17 MR. TULANTE: -- thinking of.

18 BY MR. TULANTE:

19 Q Let me switch tracks a little bit to the request for JAG
20 funding. Are you familiar with what the City intends to use its
21 FY 2017 JAG allocation for if it were to receive the JAG?

22 A Yes, sir. Generally, and to be fair, mostly focused on the
23 police department, but, yes, sir.

24 Q And how are you -- how are you -- how do you have the
25 familiarity?

1 A With, again, overseeing the Office of Criminal Justice who
2 prepares the grant as well as my work with the police
3 department.

4 Q And what -- what types of things the City intends to use
5 the money for?

6 A The three big buckets that I think my biggest concerns are
7 around police overtime, around reality-based training, as well
8 as Narcan for police officers to carry. The overtime is
9 directly related to our most difficult and most challenged
10 neighborhoods. It's to provide additional officers and
11 additional deployment into those -- into those areas.
12 Reality-based training has been largely one of the most
13 successful training programs we've ever used. If you look at --

14 THE COURT: What kind of training do you call it?

15 THE WITNESS: Reality-based training. So this is
16 putting officers in real-time circumstances where they have to
17 make snap decisions. Commissioner Ross, when he was -- when he
18 was first deputy, put this training into place in order to
19 address the large number of officer-involved shootings that the
20 City had, and it has been very successful in bringing those
21 officer-involved shootings down to record lows, and -- and I
22 think all officers that I've -- that I've spoken to anecdotally
23 that have gone through it think it as one of the most important
24 training sessions that they've gone -- gone through.

25 So enhancements to reality-based training is a good

1 thing and makes us -- it makes us safer as a city. And then --
2 then, finally, Narcan is -- is a drug used to stop an opioid --
3 an opioid reaction when someone has overdosed. We try to equip
4 as many of our officers with Narcan as we can.

5 BY MR. TULANTE:

6 Q What do you mean stop an overdose reaction? What do you
7 mean in practical terms?

8 A So if someone is -- is going through an overdose, Narcan is
9 administered, and it stops that overdose and saves that
10 individual's life. We've had over 300 -- just over 300
11 Narcan-administered saves this year. So literal --

12 Q Is it -- administered saves, like what -- what are being
13 saved?

14 A Individuals. So individual -- so officers have
15 administered Narcan over 300 times and saved people's lives. If
16 we could -- if we could provide additional doses to Narcan
17 across the City, I would imagine that we would save more lives.
18 And so without the funding, we will not be able to further --
19 further -- or further deploy Narcan to additional officers.

20 Q How many -- approximately, how many overdose deaths were
21 there last year?

22 A There were just -- just over 900 deaths last year.

23 Q And how does that compare to the murder rate for last year?

24 A It's more than three times the murder rate. And this year,
25 we're expecting close to 1200 deaths, which will be four times

1 the murder rate.

2 Q So if the City, and I want to really focus on the police
3 department, were not able to receive this funding for FY 2017,
4 what effect would that have on the City?

5 A These programs wouldn't -- wouldn't move forward, and so,
6 we wouldn't have additional officers in our most challenged
7 neighborhoods. We wouldn't be able to improve and enhance
8 reality-based training, and more people would die because we
9 couldn't provide Narcan and administer Narcan on a broader
10 basis.

11 MR. TULANTE: Your Honor, may I have a second to
12 consult with the colleagues?

13 (Pause)

14 BY MR. TULANTE:

15 Q Mr. Abernathy, I just wanted to clarify some numbers. We
16 see in P-3, that is your declaration, on the paragraph six at
17 the top of page three, you had --

18 MR. TULANTE: I think Your Honor had asked some
19 questions about the breakdown of who is pre-sentenced and so
20 forth.

21 THE COURT: Okay.

22 MR. TULANTE: I just want to clarify.

23 BY MR. TULANTE:

24 Q You said that 83 percent of inmates are all in a pretrial
25 posture. What does that mean?

Direct Examination - Abernathy/

Cross-Examination - Abernathy

1 A It means that they have yet to go to trial or that there is
2 some sort of detainer, a probation or parole detainer.

3 Q And when you say 78 percent of inmates, what does that --
4 what does that reference?

5 A I should apologize and clarify. Thank you for -- because I
6 did misspeak when I provided -- so, 17 percent of our inmates
7 are sentenced. Seventy-nine percent of our inmates today, as of
8 today, are currently in a pretrial posture, not 83 percent, 79
9 percent. Two percent of inmates are in a pre-sentencing
10 posture. They've been found guilty but have not been sentenced,
11 and two percent are in some form of other temporary detention.

12 Q You mean like a violation of parole and so forth?

13 A A violation of parole, for example, would be actually in
14 the pretrial posture.

15 MR. TULANTE: Your Honor, with that -- unless Your
16 Honor has questions --

17 THE COURT: No, that's fine.

18 MR. TULANTE: -- no further questions.

19 CROSS-EXAMINATION

20 BY MR. GARG:

21 Q Good morning, Mr. Abernathy.

22 A Good morning.

23 Q My name is Arjun Garg. I'm with the Department of Justice.
24 I wanted to talk about -- I think with counsel, you reviewed
25 the -- the DHS Form I-247A, you discussed that, and it's in your

1 book. You're welcome to look at it, but I'm not going to ask
2 about the specifics of the document. I wanted to confirm my
3 thought.

4 I heard you say you're not sure how long those
5 documents are maintained by the City when it receives them, that
6 Form I-247A; is that accurate?

7 A That's accurate. I don't know our retention policy.

8 Q In your experience, have any of those forms been discarded
9 by the City?

10 A Not to my knowledge.

11 Q Do you know what happens to a Form I-27 -- I-247A when a
12 detainee leaves the Philadelphia Prison System to be transferred
13 to another prison system?

14 A No, I -- I do not know.

15 Q All right. Now, we also talked about the consent form that
16 the Philadelphia Department of Prisons instituted earlier this
17 year when ICE seeks to interview an inmate in a Philadelphia
18 prison. And what I wanted to know is does the City have any
19 consent form similar to that that's required to be provided to
20 an inmate when there is a request to interview the inmate by a
21 law enforcement agency other than ICE?

22 A No, we do not.

23 Q ICE is the only one that that kind of consent form exists
24 for in the City?

25 A Yes, because ICE is the only one that investigates civil --

1 civil matters.

2 Q Now, we also discussed Executive Order No. 516, and, again,
3 that's -- that's in the binder. I'm not going to walk you
4 through the document, but you're welcome to look at it; it's
5 P-4, and we discussed that there is a portion of -- sorry, I'll
6 flip to it myself. There's a portion of section one of
7 Executive Order No. 516 that discusses notice of an alien's
8 pending release and under what circumstances the City can -- the
9 City and police can provide that notice to federal authorities.

10 Now, so just to confirm, this says that the notice on
11 the pending release will be provided only where a judicial
12 warrant supports that request; is that correct?

13 A This -- this specifically mentions first and second-degree
14 felonies. The memo that I issued to the Prisons Department at a
15 later date further clarified that any time a judicial warrant is
16 provided, no matter what the charge or underlying charges, we
17 should -- we should honor that warrant.

18 Q Okay. I understand that. I'm trying to get something a
19 little different. So I think you testified that, in your
20 experience, ICE will issue a detainer request asking for notice
21 of pending release that is supported only by an administrative
22 immigration warrant; is that accurate?

23 A Often times, yes.

24 Q In that scenario, does Executive Order No. 516 allow
25 communicating back to ICE upon that request, the notice of the

alien's pending release?

A No, it does not.

Q What are the most serious crimes that people are held for in Philadelphia prisons?

A Rape, murder.

Q So in -- okay. An alien who has committed rape or murder would not be -- have that notice of custody release given to ICE, unless it's supported by a judicial warrant, not an administration immigration warrant, correct?

THE COURT: Well --

THE WITNESS: Correct.

THE COURT: Well, wait a minute. This is -- is the person convicted or pretrial, or --

MR. GARG: I'll ask -- I'll ask --

THE COURT: I mean I think you need to clarify it.

MR. GARG: I'll ask Mr. Abernathy.

THE COURT: What?

MR. GARG: I'll ask Mr. Abernathy.

THE COURT: Well, then, you need to rephrase the question.

BY MR. GARG:

Q Do people in Philadelphia -- does the Philadelphia prison hold rape and/or murder convicts?

A No, we do not.

Q Okay. The Philadelphia prison holds rape and/or murder

accusees (sic), I guess?

A Yes, those --

Q Is that correct?

A -- those awaiting trial.

Q What are the most serious kinds of convicts held by Philadelphia prisons?

A So it would be any sentence that is less than two years, essentially.

THE COURT: Yeah, but somebody could be convicted of rape and get a sentence of less than two years, right?

THE WITNESS: Yes, sir.

THE COURT: Or they could have voluntary manslaughter and get a sentence less than two years?

THE WITNESS: Yes, sir.

THE COURT: Go ahead.

MR. GARG: All right.

BY MR. GARG:

Q So, in those scenarios, any prisoner, whatever the crime is, if they're convicted with a sentence for less than two years, they could be in the Philadelphia prison system, that type of alien would not have his information about his pending release transmitted to ICE by the City unless the request from ICE was supported by a judicial warrant as opposed to an immigration warrant; is that correct?

A Yes.

1 Q I also want to ask you about -- we talked about your
2 declaration a little. One statement made in your declaration,
3 I'm happy to refer you to it, and its paragraph four of your
4 declaration, but I can just briefly discuss it. As I understand
5 your testimony in that declaration, city officials will ask for
6 an alien's immigration status if required by federal law or
7 state law or if required for benefits eligibility; is that
8 accurate?

9 A Yes.

10 Q Can you describe any examples you're aware of where federal
11 law or state law requires asking for immigration status?

12 A Yes. So as an example, the prison system, there is a state
13 regulation where the prison system has to ask about immigration
14 status upon -- upon admittance.

15 Q Are there any other examples that you know of?

16 A Yes, there are some within our social service system. I
17 don't feel comfortable speaking to it in detail, but I know that
18 they exist.

19 Q All right. Now, I'd like to talk about your understanding
20 of the dimensions of cooperation with sharing information that
21 the City provides to ICE. As you understand city -- and before
22 we start, let me clarify. In your position as first deputy
23 managing director, you oversee the Philadelphia police and the
24 Philadelphia prisons; is that accurate?

25 A Yes.

1 Q They fall under your purview?

2 A Yes.

3 Q As you understand city policy, can a city employee under
4 your purview respond if the employer receives a request from ICE
5 asking whether a particular alien is being held in city custody?

6 A Yes.

7 Q As you understand city policies, can a city employee under
8 your purview respond if the employer receives a request from ICE
9 asking for identifying information of a particular alien being
10 held in the City's custody?

11 A The short answer is, yes, but all of that identifying
12 information is already shared between PARS, NCIC, and AFIS. So
13 the information is already available to all of our federal law
14 enforcement partners.

15 Q As you understand city policy, can a city employee under
16 your purview respond if the employer receives a request from ICE
17 asking the location where a particular alien is being held in
18 the City's custody among the various facilities the City has?

19 A A particular individual? Yes. I wouldn't call that
20 individual an alien, but, yes.

21 Q As you understand city policy, can a city employee under
22 your purview respond if the employer receives a request from ICE
23 asking when a particular alien will be released from the City's
24 custody?

25 A No.

1 Q As you understand city policy, can a city employee respond
2 if the employer receives a request from ICE asking for the
3 whereabouts of a particular alien who has been released from the
4 City's law enforcement custody?

5 A I think it would depend on the circumstances. So it is --
6 I don't think that's a black-and-white question.

7 Q Can you -- can you discuss under what circumstances it
8 would versus would not be allowed?

9 A Well, first of all, I'm not sure that a city employee would
10 know the location of an individual, one, and, two, I think it
11 depends if that is in the investigation of a crime, then
12 certainly, the police department would be sharing that
13 information. If it was in -- to advance a civil immigration
14 action, then -- then, no, I would -- I would not expect the
15 employee to move forward.

16 Q In your experience regarding all of these city policies and
17 the dimensions of what information is allowed to be shared with
18 federal immigration authorities such as ICE, what advice or
19 training is given to city employees beyond the actual text of
20 the policies themselves?

21 A So as recently as last month at roll call, officers were
22 reminded not to ask for documentation status. So training and
23 kind of regular communication happens on a fairly regular basis
24 for employees.

25 Q To your awareness, does any of that training that happens

1 on a fairly regular basis reference the Federal Statute 8 U.S.
2 7 -- 8 U.S.C. 1373, that PARS prohibition on sharing information
3 about providing immigration status with ICE?

4 A No, I -- no. To my knowledge, it does not.

5 Q Have you advised city employees or provided any training
6 that city employees may in response to a request from ICE
7 communicate information regarding immigration status to ICE with
8 respect to any alien in the City's custody?

9 A I don't -- no, because they are not to produce information
10 to ICE regarding -- one, we don't have the information, right?
11 We don't actually ask for documentation, except for the prisons,
12 and the prisons does not communicate that information.

13 Q So following on that answer, I would imagine that, to your
14 awareness, no other city official has advised employees or
15 provided training that city employees may in response to a
16 request from ICE communicate information regarding immigration
17 status to ICE with respect to an alien in the City's custody?

18 A No, because that's not the city policy.

19 Q Executive Order 8-09, which is P-2, in the binder I think
20 you have in front of you?

21 A Yes.

22 Q With respect to this policy, Executive Order 8-09, have you
23 advised city employees or provided any training that they do not
24 violate Executive Order 8-09 when they disclose information
25 regarding immigration status to ICE?

1 A No, because they would be violating the executive order.

2 Q With respect to the Police Commissioner Memorandum 01-06,
3 have you advised city employees or provided any training that
4 they do not violate the Police Commissioner Memorandum 01-06
5 when they disclose information regarding immigration status to
6 ICE?

7 A No.

8 Q I'd like to look at Executive Order 8-09, which is, again,
9 P-2.

10 THE COURT: Which -- what Exhibit?

11 MR. GARG: It's Exhibit P-2 in the binder that --

12 THE COURT: Yes. Okay.

13 MR. GARG: -- you have in front of you.

14 THE COURT: Yes.

15 BY MR. GARG:

16 Q And we're looking at section two discussing what
17 inquiries -- various kinds of inquiries that shall not be made
18 about a person's immigration status unless certain exceptions
19 are made and you're welcome to read through that as you consider
20 the question I'm going to ask.

21 Do you understand that Executive Order 8-09 allows
22 city employees under your purview to inquire with ICE about a
23 person's immigration status? And, to be clear, what I'm talking
24 about here is the request goes from the City to ICE. Can you
25 tell me about a particular person's immigration status?

1 A Yes, they can.

2 Q Okay. Have you advised city employees or provided any
3 training that is consistent with your answer to that yes, they
4 can inquire from ICE about a person's immigration status?

5 A We've had a broad policy conversation, but we haven't
6 provided direct -- direct training.

7 Q Who has been part of that policy conversation?

8 A It has -- certainly, the mayor's office, the Office of
9 Immigrant Affairs, the police department, the prisons -- the
10 prisons department. But, again, I don't -- I can't imagine a
11 reason why an employee would need to make that request to ICE,
12 but they certainly could if they needed -- they wanted to.

13 Q So to your awareness, outside of policy discussions by city
14 leadership, ordinary line employees working for the City have
15 not been advised that Executive Order 8-09 allows them to
16 inquire with ICE about a person's alien immigration status?

17 A No, but line employees also have not asked that question,
18 because, again, there's no reason for line employees to make
19 that request to ICE.

20 MR. GARG: One moment, Your Honor?

21 THE COURT: Sure.

22 (Pause)

23 MR. GARG: Nothing further, Your Honor.

24 Thank you very much, Mr. Abernathy.

25 THE COURT: All right. I just want to ask one

1 question. It's sort of a hypothetical.

2 So let's say John Smith is an inmate in one of your
3 prisons, all right, and it so happens that he is an immigrant.
4 And let's say he was -- he was arrested, but then he was
5 released on bail. So he's unconvicted, all right, and he's
6 released. And then, you get a call -- the prisoner -- the
7 warden of the prison or one of the staff gets a call from
8 Philadelphia Police Department saying we have information that
9 John Smith has just murdered somebody. We'd like to know what
10 your records show about his address.

11 So according to what you said, the -- the prison
12 employee would then go look in his paper file or they would look
13 online? Which would they look to or both?

14 THE WITNESS: They would probably start in the
15 database, but they could certainly --

16 THE COURT: All right. They would look online. And
17 would they give the police department the address of this -- of
18 John Smith?

19 THE WITNESS: They would, but the police department
20 would already have access to the address.

21 THE COURT: Okay. So my --

22 THE WITNESS: So the --

23 THE COURT: -- hypothetical is unlikely?

24 THE WITNESS: Yes, sir.

25 THE COURT: Even though he -- he -- because he was

1 arrested, he would -- they would have that?

2 THE WITNESS: Correct. So our lock-and-track system
3 would be --

4 THE COURT: All right. Now, but just suppose --

5 THE WITNESS: -- would be -- near -- in PARS.

6 THE COURT: All right. But just suppose they check
7 anyway. Now, if it so happened that this John Smith was an
8 immigrant, and when they looked in that file, they would find
9 the immigration detainer that we discussed before, would the
10 prison official refuse to give information about John Smith's
11 address to the police department because he was an immigrant?

12 THE WITNESS: No, sir.

13 THE COURT: All right. Now, suppose ICE called and
14 made the -- makes -- someone from ICE made the same phone call,
15 okay, and let's just say they hadn't -- they didn't know, but
16 they had information that John Smith just murdered somebody.
17 Would the prison give that information about his address to ICE?

18 THE WITNESS: In the course of an ongoing law
19 enforcement effort, I think that, yes, they would.

20 THE COURT: Okay. Now, suppose -- if John Smith --

21 THE WITNESS: But -- but to be -- to --

22 THE COURT: -- had -- all right.

23 THE WITNESS: -- to be fair, Judge, they would
24 probably also make a call to me --

25 THE COURT: All right.

1 THE WITNESS: -- before they could --

2 THE COURT: But you believe the city policy would
3 allow that?

4 THE WITNESS: Yes, because, again, it's --

5 THE COURT: All right. Now, if John Smith had been --

6 THE WITNESS: -- in the course of an ongoing
7 investigation.

8 THE COURT: If John Smith had been convicted of murder
9 and then was released, there's no question about it that you
10 would provide the information about what his -- what your
11 records showed about his address?

12 THE WITNESS: To ICE?

13 THE COURT: What?

14 THE WITNESS: To ICE, or --

15 THE COURT: Yeah. To anybody. If he had been
16 convicted of a first or second-degree felony.

17 THE WITNESS: If he had been convicted and released?

18 THE COURT: Yeah.

19 THE WITNESS: No, we probably would not. We
20 wouldn't --

21 THE COURT: You would not?

22 THE WITNESS: We probably would not.

23 THE COURT: Why not?

24 THE WITNESS: One, that address information would
25 already be in a federal database, so that would have already

1 been uploaded to NCIC or to --

2 THE COURT: Okay. Suppose he was not an immigrant?

3 THE WITNESS: I'm sorry?

4 THE COURT: -- and they just call -- they want to --
5 they're being very thorough, you know? They looked on the
6 database, but they want to see maybe you have an address that
7 was not in the database in your prison folder, or maybe -- well,
8 let me ask you this: When a prisoner is released, do you ask
9 for any information about where they're going to live or do you
10 just let them go?

11 THE WITNESS: Yes, sir, we do.

12 THE COURT: You do?

13 THE WITNESS: Yes.

14 THE COURT: All right. And that could be different
15 than the address they gave the police, right?

16 THE WITNESS: Yeah. That's fair.

17 THE COURT: All right. So my -- let me go back to my
18 hypothetical. So what -- if the police department called so
19 saying, we've looked at the database, but we want to know what
20 your records show about what address the prisoner gave you to
21 where he is going to live. You would give them that
22 information?

23 THE WITNESS: Yes, sir.

24 THE COURT: Over the phone from a police officer?

25 THE WITNESS: Most likely, yes, sir.

Cross-Examination - Abernathy/
Redirect Examination - Abernathy

1 THE COURT: Okay. Now, suppose this John Smith was
2 also -- you had -- when you looked at the file, you would see he
3 was an immigrant because you got the immigration warrant. Would
4 you give that information to -- would you give it to the police
5 department if they called?

6 THE WITNESS: Yes, sir.

7 THE COURT: Would you give it to ICE if ICE called?

8 THE WITNESS: If ICE was pursuing a criminal matter,
9 an active criminal investigation, then, yes, we would, but if
10 they were investigating a civil matter, we would not.

11 THE COURT: Okay. All right. That's all.

12 Do you have any questions?

13 MR. GARG: Nothing further, Your Honor. Thank you.

14 THE COURT: All right.

15 All right. Mr. Tulante?

16 MR. TULANTE: Your Honor, may I briefly?

17 THE COURT: Yeah, sure.

18 MR. TULANTE: And if Your Honor will indulge me, I
19 want to propose some hypotheticals to follow up --

20 THE COURT: Go ahead.

21 MR. TULANTE: -- on Your Honor's hypotheticals.

22 REDIRECT EXAMINATION

23 BY MR. TULANTE:

24 Q Let me propose a hypothetical of if there's an -- let's
25 start with P-2, that's the Executive Order 08-09. Under the

1 hypothetical if there's an inmate, and let's say he's from the
2 Congo, right, he has -- he's here. He's undocumented. He's
3 released and ICE contacts prisons or police or some city agency
4 and says, you know, we believe he's involved in wrongdoing right
5 now, and we need his information, including status information.
6 Under section 3 -- 3(b)(3), and that's in P-2, do you -- can the
7 City share information or cooperate with ICE?

8 A Yes, and -- which was the basis of my -- of my response to
9 the judge.

10 Q And why is that?

11 A Because it's -- again, it's as part of a -- that individual
12 is suspected of a crime and it's an ongoing criminal
13 investigation.

14 Q And if you look at the -- now, turn to P-4. This is the
15 Executive Order 05 -- 516. Does this executive order speak to
16 any cooperation with respect to anyone after release?

17 A I'm sorry. Could you --

18 Q So if ICE is asking information about someone who has been
19 released, they think he's a suspect, I'm just trying to clarify,
20 does that fall under this executive order or the other one?

21 A The previous executive order.

22 Q And if you -- counsel's set of questions regarding someone
23 being an alien, you know, what information you provide whether
24 someone is an alien, the City would provide, does the City have
25 any independent way, generally, of determining whether or not

1 the person ICE is referring is, in fact, an alien?

2 A No, we do not.

3 Q And why is that?

4 A Again, the city officials don't -- don't inquire about
5 someone's documented immigration status.

6 Q And if you go to P-5, which is your memorandum clarifying
7 the prison's cooperation or compliance with criminal judicial
8 warrants, has that understanding in terms of that prisons will
9 comply with criminal warrants without respect to whether it's a
10 first-degree or second-degree felony, has that understanding
11 been communicated to ICE directly?

12 A Yes.

13 Q In what form?

14 A I spoke to Director Ritchey.

15 Q And so, it was your understanding that ICE recognizes that
16 the City will comply with a warrant -- a criminal warrant
17 without reference to the nature of the --

18 A That's --

19 Q -- underlying crime?

20 A That's my understanding, and we -- not only did I speak to
21 her, we actually had a meeting where we -- where Commissioner
22 Ross and I had a conversation about this subject specifically.

23 THE COURT: Was there any significance of -- that this
24 was not put into an executive order, but it's just like an
25 internal memorandum? Was there any thought that it ought to be

1 in a -- since it's modifying an executive order, that it ought
2 to be an executive order itself, or --

3 THE WITNESS: There was some conversation --
4 conversation around it, but we believed that -- that the
5 memorandum would -- would, one, show the City's intent, and,
6 two, it's a judicial order, and, you know, just like when we
7 receive a judicial order to release someone, if we receive a
8 judicial order to keep someone, we're going to do that.

9 THE COURT: Right. Okay. Thank you.

10 BY MR. TULANTE:

11 Q And if you -- now I want to direct you to Exhibit P-6, and
12 that is, for the record, the sample of DHS Form I-247A. And do
13 you see section two, where it says, "It is therefore requested
14 that you," and it says, "notify DHS," there's all this set of
15 that information. Do you see that?

16 A Yes.

17 Q Is there anything there that seeks immigration status
18 information from the prisons?

19 A No, it does not.

20 Q And what does this seek that -- and, again, I'm talking
21 about the notify part not the maintaining custody.

22 A Yeah. It asks us to notify Immigration and Customs
23 Enforcement as early as possible and practical upon the release
24 of someone.

25 Q And the -- I'm giving you whiplash because I'm taking you

1 back to an earlier exhibit. If you go back to P-2, and that is
2 Executive Order 8-09, section three says, "As used here, and
3 confidential information means any information obtained and
4 maintained by city agency relating to an individual's
5 immigration status." Do you see that?

6 A Yes.

7 Q And so, with respect to the set of questions counsel asked
8 you about all of this information relating to an alien, is that
9 subject to this executive order?

10 A Yes.

11 Q So -- well, I guess my question is, is asking somebody's
12 whereabouts, does this executive order make that confidential?

13 A No.

14 Q What does it make confidential?

15 A It makes the individual's immigration status confidential.

16 MR. TULANTE: Your Honor, I have no further questions.

17 THE COURT: All right.

18 Anything else, Mr. Garg?

19 MR. GARG: Nothing further, Your Honor. Thank you.

20 THE COURT: All right. Thank you.

21 All right. Thank you, Mr. Abernathy.

22 THE WITNESS: Thank you, sir.

23 THE COURT: You're excused. Okay. I would like to do
24 one more witness before we take a short lunch break. What's --
25 how does your schedule seem -- we're proceeding?

1 MR. TULANTE: I'm paid by the City, so I'm here.

2 THE COURT: Sorry?

3 MR. TULANTE: I think we have one more. We can
4 squeeze one shorter witness in.

5 THE COURT: All right. But you have -- then you -- we
6 have three more witnesses in total, right?

7 MR. TULANTE: Yeah, but they're -- they're much
8 shorter. They're getting progressively shorter.

9 THE COURT: All right, then.

10 MR. TULANTE: So they're much shorter.

11 THE COURT: All right.

12 Do you -- are you -- you're not entertaining to call
13 any witnesses at all?

14 MR. GARG: That's correct, Your Honor, and cross of
15 the additional witnesses, I also expect, would be much shorter.

16 MR. TULANTE: Yeah.

17 THE COURT: All right. Well, all right. Let's do one
18 more witness. Let's see where we are then, okay?

19 If you all agree, and it won't be short, I'm -- I'm
20 prepared to go ahead without a lunch break. We could take a
21 short recess without a lunch break, and then --

22 MR. TULANTE: I think -- I think we can -- well, I'm
23 looking at my coffee here.

24 THE COURT: Well, we -- we -- let's do the one witness
25 and we'll see where we are.

1 MR. TULANTE: Okay. I think let's see where we are
2 after that.

3 THE COURT: Who is the next witness?

4 MS. AHUJA: Your Honor, the City calls Julie
5 Wertheimer to the stand.

6 THE COURT: Okay.

7 THE COURT: Okay. She also submitted a declaration?

8 MS. AHUJA: Correct.

9 (Pause)

10 (JULIE MICHELLE WERTHEIMER, Witness, is Sworn)

11 THE DEPUTY: Thank you. Please state your full name
12 and spell your last name for the record.

13 THE WITNESS: Julie Michelle Wertheimer.

14 THE COURT: You have to keep your voice up.

15 THE WITNESS: Julie Michelle Wertheimer.

16 THE COURT: That's much better. All right. Go ahead.

17 THE WITNESS: Wertheimer is W- --

18 THE COURT: Yeah. Speak right into the microphone.
19 Go ahead.

20 THE WITNESS: W-E-R-T-H-E-I-M-E-R.

21 MS. AHUJA: Your Honor, may I proceed?

22 THE COURT: Go ahead.

23 DIRECT EXAMINATION

24 BY MS. AHUJA:

25 Q Ms. Wertheimer, what is your position with the City of

1 Philadelphia?

2 A I serve as Chief of Staff in the Office of Criminal Justice
3 which is a division of the Managing Director's Office.

4 Q Did you prepare a declaration in support of the City's
5 motion for preliminary injunction in this matter?

6 A Yes.

7 Q Ms. Wertheimer, can you please turn to P-7 in the binder
8 before you? It should be titled Declaration of Julie
9 Wertheimer.

10 A Yes.

11 Q Do you recognize P-7?

12 A Yes.

13 Q Turn to page 5. Is that your signature?

14 A Yes.

15 Q Is this the declaration you submitted?

16 A Yes.

17 Q Do you adopt this testimony as yours today?

18 A I do.

19 Q Ms. Wertheimer, what are your responsibilities as chief of
20 staff in the Office of Criminal Justice?

21 A In my capacity as chief of staff, I serve as the
22 Administration's liaison to the criminal justice agencies in the
23 county that are not under the executive branch, so, for
24 instance, the district attorney's office, the First Judicial
25 District, the public defender, the sheriff. In addition, I

1 work closely with the police department and the Department of
2 Prisons on policy, strategy, and grants, and I also oversee
3 smaller units that are not part -- that are not their own
4 department such as the Office of Violence Prevention, the
5 Philadelphia Re-entry Coalition.

6 Q Do you also oversee all of the city's criminal justice
7 grants including the Byrne JAG grant?

8 A Yes.

9 Q What kind of grant is a JAG grant?

10 A It's a formula grant.

11 Q What is a formula grant?

12 A A formula grant is a grant that is congressionally
13 allocated, and that allocation is attached to the notice of
14 financial assistance as part of the grant application.

15 Q How is it calculated, the formula grant?

16 A It's congressionally appropriated. That formula is
17 determined based on a number of factors including the
18 jurisdiction's population and crime rate.

19 Q And who determines that formula? Who created that formula?

20 A Congress.

21 Q Does the city have to compete with other jurisdictions to
22 receive its Byrne JAG grant?

23 A No.

24 Q You testified in your declaration, you can turn to it on
25 paragraph 11, that Philadelphia applied for approximately 1.6

1 million in fiscal year Byrne JAG funding. Who decides what that
2 money will be used for?

3 A Well, in Philadelphia, like in many counties across
4 Pennsylvania, we have what's called a Criminal Justice Advisory
5 Board or CJAB. The Criminal Justice Advisory Board is made up
6 of the top-level principals, stakeholders, of the major criminal
7 justice departments and agencies in the county. The Criminal
8 Justice Advisory Board also has a number of subcommittees that
9 serve different functions including the Grant Subcommittee. And
10 that Grant Subcommittee is charged with, among other things,
11 making decisions about how the annual JAG allocation will be
12 used in Philadelphia.

13 Q How do they decide to fund one program over another?

14 A So the decisions are made based on priority is shared
15 across the criminal justice system, urgency of need, and really
16 any pressing crises that maybe need addressing.

17 Q For fiscal year 2017, what projects came to the forefront?

18 A Well, the one that comes to mind is addressing the opioid
19 crises. The police department requested funding for overtime
20 and for Narcan specifically targeted towards addressing that
21 epidemic. In addition, my office requested funding for a case
22 management software, which would be used for both gun violence
23 prevention programs and re-entry programs to help deliver
24 limited resources in the most efficient and effective way
25 possible.

1 Q Let's discuss the opioid epidemic for a moment. Why was
2 funding for that specifically targeted for fiscal year 2017?

3 A Well, in addition to it being a pressing crisis, I think
4 it's important to understand how the city's budget process work.
5 The way the budget -- we're on a fiscal year that begins on July
6 1, and we start developing our budget basically the November or
7 December prior. A proposed budget is submitted by the mayor to
8 city council usually around February and council has a series of
9 hearings and then votes on it by May or June, and it goes into
10 effect on July 1. When needs or additional resources are needed
11 after that February to May time frame, you usually have to wait
12 until the next budget cycle to get that funding in.

13 Q Isn't that the next year?

14 A The next year. And it wouldn't go into effect until the
15 following July 1. What the JAG grant provides for is the
16 flexibility to allocate funding to, you know, priorities that
17 pop up outside that budget development cycle.

18 Q So what popped up recently?

19 A Well, I think one thing that's an important thing to note
20 is in dealing with the opioid crisis, the city worked to seal
21 off the Conrail tracks. And while that was a positive
22 development in a lot of ways, it also meant that the
23 neighborhoods and communities surrounding that area needed extra
24 resources, specifically extra police overtime, extra Narcan, to
25 help address the individuals who were suffering from addiction

1 who are moving into the communities.

2 Q And when did that sealing occur?

3 A I believe it was in August.

4 Q So it would have been after the budget cycle?

5 A After the budget cycle.

6 Q Let's turn to the JAG grant process. You testified in your
7 declaration at paragraph 5 that the city has applied for JAG
8 funding every year since the program's inception in 2005, and
9 that it has received funding for every single application; is
10 that correct?

11 A Yes.

12 Q Has the city always received its congressional allocation
13 every year without controversy?

14 A Well, there was one year where mistakenly, through a typo,
15 we accidentally requested less than the allocation and received
16 notice from our program officer at the Bureau of Justice
17 Assistance that we needed to submit a revised budget for the
18 full allocation.

19 Q Why did your program officer, your counterpart, ask you to
20 do that?

21 A It was a congressionally appropriated allocation, and as
22 such, we were entitled to and had to apply for the full amount.

23 Q Before fiscal year 2016, did the Department ever direct
24 the city how to interpret and implement the city's own policies?

25 A Not that I know of.

1 Q Before the fiscal year 2016 JAG award, had the Department
2 ever conditioned the award of criminal justice funding on
3 assisting federal immigration enforcement efforts?

4 A I'm not aware of any such conditions.

5 Q Before the fiscal year 2016 JAG award, had the department
6 ever asked the city to change its policies based on the JAG
7 grant conditions?

8 A No. But the one notable exception is over time we've been
9 asked to update policies when there have been changes to the CFR
10 making sure our own policies mirror those updates.

11 Q So mirror the Federal Code of Federal Regulations?

12 A Yes.

13 Q Let's turn to 2016. Were any new conditions added to the
14 JAG grant application process?

15 A Yes.

16 Q What were the new conditions or condition?

17 A There was a condition requiring that we certify compliance
18 with Section 1373.

19 Q What was the form of that certification?

20 A It was a letter from the city solicitor as well as an
21 accompanying legal brief.

22 Q Before 2016, had DOJ ever asked for a legal opinion in
23 association with a JAG application or award before?

24 A No.

25 Q Is a formal legal opinion from the city solicitor required

1 to apply for any other criminal justice Grant?

2 A No.

3 Q You testified in your declaration about the new condition
4 that DOJ asked the city to certify for its fiscal year 2017 JAG
5 application. What were the new conditions?

6 A Well, in addition to requiring certification with 1373,
7 again, it also asked for certification regarding our policies to
8 provide upon scheduled release 48 hours' notice for individuals
9 that the Department of Homeland Security requests and provide
10 access to our jails for the Department of Homeland Security.

11 Q Was the fiscal year 2017 JAG application different from
12 years prior?

13 A Yes.

14 Q How so?

15 A In addition to requiring those three certifications, it
16 also required physical signatures and certifications from the
17 city solicitor and the mayor.

18 Q In your experience in managing the application process over
19 the years, the grant application process, have you ever had to
20 obtain a signature by the mayor or a signature by the city
21 solicitor for a Department of Justice grant?

22 A No.

23 Q Has the city heard from the Department of Justice with
24 respect to its physical year 2017 JAG application?

25 A No.

1 Q Has the city heard from the department with respect to its
2 fiscal year 2016 certification of compliance for the 2016 JAG
3 award?

4 A Yes.

5 Q What has the city heard?

6 A On October 12th, I received an email from Tracey Trautman,
7 the acting director of the Bureau of Justice Assistance. In
8 that email was a letter dated October 11th to Mayor Kenney from
9 the Acting Assistant Attorney General Alan Hanson.

10 Q Now is Ms. Trautman your counterpart or program officer
11 that you've mentioned previously?

12 A No.

13 Q Ms. Wertheimer, please turn to tab P-8 in the binder before
14 you. Did -- is this the letter that you just referenced?

15 A Yes.

16 Q Now you -- if you need to refresh your recollection, you
17 may. But in your words, what did the letter say to you?

18 A The letter was to inform us that upon the Department's
19 preliminary review, they believe that we had policies that
20 either violated or appeared to violate Section 1373.

21 Q Did the letter require any response from the City?

22 A Yes.

23 Q What response?

24 A It required that for the policies that may violate that we
25 certify the Department's interpretation of those policies and

1 certify that we communicate that to both police officers and
2 civilian employees alike.

3 Q And when is your answer due to the department?

4 A Tomorrow, October 27th.

5 Q Do you have an understanding of what would happen if the
6 City didn't submit an answer or didn't submit these required
7 certifications?

8 A Well, while the letter doesn't directly state that, based
9 on previous communications including, I believe, a press
10 conference by the attorney general himself, there is suggestions
11 that they would try to claw back the FY '16 award.

12 Q Has the FY '16 award already been obligated?

13 A Yes.

14 Q Has the City ever not received a grant from the Department
15 of Justice for which it had applied?

16 A Yes.

17 Q When?

18 A Well, we apply for competitive grants from the Department
19 all the time. Sometimes those applications are successful and
20 sometimes they're not. For instance, last week we were notified
21 that our application for the comprehensive opioid abuse grant
22 program was unsuccessful.

23 Q And that was a competitive grant obligation?

24 A Yes.

25 Q Have you ever been denied a formula grant?

1 A No.

2 Q Does the city receive any other annual formula grant
3 funding for support criminal justice broadly?

4 A No.

5 Q In the past, when -- excuse me, when Philadelphia received
6 JAG funding, how was that money processed by the City?

7 A Well, we receive, via email electronically, an award letter
8 from the Department of Justice. That award letter is executed
9 by an authorized official, in this case, the managing director.

10 The signed copy of the award letter is returned via email to the
11 Department of Justice. And then a copy of said letter is

12 processed via our Administrative Services Unit to the Grants

13 Accounting Unit, which is a division of our Finance Department.

14 The Administrative Services Unit would accept what's called a

15 grant profile, which includes relevant information including the
16 grant award and the duration of the project. What Grants

17 Accounting will do with that profile is set up what's called an
18 index code, or in some cases, multiple index codes. And those

19 are six-digit codes that serve basically as different bank
20 accounts for different programs within the city's financial

21 system. Once there's an index code in place, funds can be
22 encumbered upon it and spending can begin.

23 Q Is there an index code for the JAG program?

24 A For?

25 Q For 2017.

1 A For 2017? No. We have not received an award yet.

2 Q How is JAG funding, like the 2017 JAG award, accounted for
3 in Philadelphia's budget?

4 A Well, it's not accounted for in the general fund budget.
5 However, we have what's called the unanticipated grants fund,
6 which contains general appropriation power from which
7 departments can draw once a grant award is made.

8 Q For the unanticipated grants fund, if a grant is ultimately
9 not granted, what consequence would that be for the City?

10 A We'd be unable to spend that money and execute those
11 projects.

12 Q Will any new funding be identified or money diverted for
13 these programs?

14 A No.

15 MS. AHUJA: One moment, Your Honor.

16 Mr. Garg, your witness.

17 THE COURT: Are you finished?

18 MS. AHUJA: I am.

19 THE COURT: All right. Cross-examine.

20 Well, let me ask one question. Are you involved in --
21 you said your answer's due tomorrow, October 27th?

22 THE WITNESS: Yes.

23 THE COURT: Are you involved in the preparation of
24 that?

25 THE WITNESS: I am not.

1 THE COURT: Go ahead.

2 CROSS-EXAMINATION

3 BY MR. GARG:

4 Q Hello, Ms. Wertheimer. My name is Arjun Garg. I'm with
5 the Department of Justice.

6 A Hello.

7 Q Following on the judge's question, I wanted to ask you do
8 you know if the City intends to submit a response tomorrow to
9 the preliminary assessment letter, PA?

10 A I am waiting to hear back from the Law Department about
11 what they plan to do.

12 Q Before the fiscal year --

13 THE COURT: So you don't know?

14 THE WITNESS: I cannot confirm that at this time. No.

15 THE COURT: All right.

16 BY MR. GARG:

17 Q Before the fiscal year 2017 grant cycle, has Philadelphia
18 ever challenged a Byrne JAG grant condition?

19 A I'm not aware of that.

20 Q Now you -- what Counsel adopted the written testimony you
21 gave in your declaration --

22 A Yes.

23 Q -- as your testimony today, and I wanted to ask you about
24 one particular statement there. And you're welcome to look at
25 your declaration. It's P-7. And I'm looking in paragraph 7 of

1 Exhibit P-7, your declaration, where you mention some uses of
2 the Byrne JAG funds that the City receives. And I want to focus
3 on one of them in particular. You say that, "Philadelphia has
4 relied on Byrne JAG funds to bolster re-entry programs for
5 formerly incarcerated individuals seeking to re-enter the
6 community." Is that correct?

7 A That's what it says. Yes.

8 Q Are you able to confirm that Philadelphia's Byrne JAG funds
9 were not used for re-entry services for any alien regarding whom
10 the City received a request from ICE as to that alien's
11 immigration's status?

12 A I can't speak to the immigration status of program
13 participants.

14 Q So the answer is no. You're not able to confirm that?

15 A No.

16 MR. GARG: Thank you. Nothing further.

17 THE COURT: All right. Redirect.

18 MS. AHUJA: No redirect, Your Honor.

19 THE COURT: All right. Thank you very much.

20 THE WITNESS: Thank you.

21 MS. AHUJA: Ms. Wertheimer can be dismissed. Thank
22 you.

23 THE COURT: Well, Mr. Tulante, what's your pleasure?
24 It's 12:20. How long do you think the other two witnesses will
25 take?

1 MR. TULANTE: Probably about -- depending on cross,
2 like, 45 minutes total?

3 UNIDENTIFIED SPEAKER: Yeah.

4 THE COURT: How long?

5 MR. TULANTE: About approximately 45 minutes total
6 with the two additional witnesses.

7 THE COURT: Well, I'm fine with taking a 10-minute
8 recess, then, and then finishing without breaking for lunch. Is
9 that your -- is that okay with you all?

10 MR. TULANTE: We're fine. The City's fine.

11 MS. GIBSON: We may need 15 minutes, Your Honor, to
12 get the witness back.

13 THE COURT: 15-minute break? That's all right.

14 Is that okay with you, Mr. Garg?

15 MR. GARG: Yes, sir. Thank you.

16 THE COURT: All right. Okay. So 15 minutes, and then
17 we'll call the other two witnesses and -- without anything
18 further. Okay? Thank you.

19 (Recess is taken from 12:22 p.m. until 12:54 p.m.)

20 THE COURT: Case briefly. So please be seated. Call
21 your next witness, please.

22 MR. PRATT: Your Honor, next we'd like to call Dr.
23 Thomas Farley.

24 THE COURT: All right. Dr. Farley.

25 DEPUTY CLERK: I have to swear you in. Please raise

your right hand.

(THOMAS A. FARLEY, Witness, is Sworn)

DEPUTY CLERK: Thank you. Please state your full name and spell your last name for the record.

THE WITNESS: Thomas A. Farley, F-A-R-L-E-Y.

THE COURT: Okay. Good morning. Please be seated.

DIRECT EXAMINATION

BY MR. PRATT:

Q Good afternoon, Dr. Farley. Where are you currently employed?

A Philadelphia Department of Public Health.

Q And one of the duties of your job?

A We are responsible for protecting and promoting the health of everyone in the city of Philadelphia.

Q And what is your title?

A I'm the health commissioner.

Q And how does one become the health commissioner in Philadelphia?

A The mayor appoints the health commissioner based upon someone's experience in public health.

Q And how long have you been the health commissioner in Philadelphia for?

A Since February of 2016.

Q Could you describe your educational background to the Court?

1 A I have a bachelor's degree in mathematics from Haverford
2 College. I have a medical degree from Tulane University. I
3 have a master's of public health at Tulane University. And I am
4 board certified and -- completed residency and am board
5 certified in pediatrics.

6 Q And could you also provide an overview of your professional
7 career?

8 A I have been working in public health since 1987, when I
9 entered a two-year training program in epidemiology operated by
10 the Centers for Disease Control and Prevention. It's called the
11 epidemic intelligence service. After that time, I began to work
12 in public health at the Louisiana Office of Public Health doing
13 investigations of infectious disease outbreaks and then
14 increasing the control of infectious diseases for the State of
15 Louisiana, including control of HIV, other sexually transmitted
16 diseases, tuberculosis, and vaccine preventable diseases.

17 Excuse me.

18 After that, I became a professor and chair of the
19 Department of Community Health Sciences at the Tulane University
20 School of Public Health and Tropical Medicine in New Orleans.
21 Then I spent a year as the senior advisor to the Commissioner of
22 Health in New York City, Dr. Tom Frieden. And then he was
23 selected to be the director for the Center for Disease Control
24 and Prevention, at which point, the Mayor of New York City
25 appointed me of health commissioner for New York City, and I

1 served in that role from 2009 two 2014.

2 Q And you mentioned that you were health commissioner for New
3 York City. What were your duties as health commissioner for New
4 York City?

5 A We were responsible for protecting and promoting the health
6 of the entire city's residents. So infectious diseases, chronic
7 diseases, whatever health threats there were, we were there to
8 protect the health of the population and to promote their
9 health.

10 Q And how many employees were in the health department in New
11 York City?

12 A About 6,000.

13 Q And you oversaw 6,000?

14 A Yes.

15 Q And how many residents were in New York City when you were
16 the health commissioner?

17 A 8.4 million.

18 Q And does New York City have an immigrant population?

19 A It does. The last I checked, there were about -- 37
20 percent of the population of New York City was foreign born.

21 Q And while you were health commissioner in New York City,
22 did your department service New York's immigrant communities?

23 A We did. We provide a wide range of services and -- from
24 infectious diseases to the health promotion and we have to deal
25 with that large immigrant population.

1 Q Do you have any academic appointments?

2 A I do. I'm an adjunct professor at the Columbia University
3 Mailman School of Public Health and also at the Tulane
4 University School of Public Health and Tropical Medicine.

5 Q And have you authored any publications?

6 A I have. I've authored more than 100 publications and
7 scientific journals. And I have authored or co-authored two
8 books on public health, one called Prescription for a Healthy
9 Nation, which lays out a strategy for promoting health across
10 the country. And the other is called Saving Gotham, and it's a
11 history of public health in New York City from 2002 to 2013.

12 Q And could you explain to the Court exactly what is public
13 health?

14 A Let me explain what public health is and by contrasting it
15 to what medicine is about. Medical care basically treats people
16 one at a time typically when they get sick and develop symptoms
17 and they seek care from a healthcare provider, and their goal is
18 cure. Public health, by contrast, is focused not on individuals
19 but, instead, on entire populations; so in this case, the entire
20 population of the city of Philadelphia. And our goal is less
21 cure than it is prevention. We try to understand what are the
22 things that make people likely to get sick and look at those
23 diseases and conditions which are particularly prevalent in the
24 population and try to put in place policies and programs that
25 prevent them from getting sick.

1 Q And as health commissioner of Philadelphia, do you oversee
2 Philadelphia's Department of Public Health?

3 A I do. And we are responsible for everyone in the
4 geographic area of Philadelphia, regardless of their -- whether
5 they are visitors or whether they're residents here or just
6 passing through.

7 Q Approximately how many people?

8 A 1.56 million people is the number who are residents of
9 Philadelphia.

10 Q And how many employees are employed by the Department of
11 Public Health?

12 A About 1200.

13 Q And do you know the size of Philadelphia's immigrant
14 population?

15 A Approximately 200,000 people in Philadelphia are born in
16 foreign countries.

17 Q And could you provide the Court with an overview of the
18 services that the Department of Public Health provides
19 Philadelphia?

20 A The Health Department offers and provides a very wide range
21 of services to deal with different health threats. So for
22 prevention and control of communicable diseases, we have a
23 program for HIV prevention and treatment, the program for the
24 treatment and prevention of other sexually transmitted diseases,
25 one for tuberculosis. We work very hard to -- excuse me -- to

1 increase the number of children in the city and adults in the
2 city who are immunized to prevent the spread of
3 vaccine-preventable diseases.

4 We're responsible for the prevention of chronic
5 diseases. So we encourage people to quit smoking and be
6 physically active. And we try to create conditions and make it
7 easier for people to do that. We are -- we try to make sure
8 that women are healthy during pregnancy and to protect the
9 health of newborn infants. We inspect restaurants so people are
10 less likely to get sick when they eat out. And we also provide
11 primary care. We have eight primary care clinics across the
12 city that offer a wide range of early clinical health services.

13 Q And what are the costs to patients of receiving medical
14 care from the Department of Public Health?

15 A Well, we will bill insurance if they have insurance, if
16 they were in our primary care clinics, but the cost is no cost
17 to the patient.

18 Q Can -- so can they receive medical care from the Department
19 of Public Health if they do not have medical insurance?

20 A Absolutely. We welcome everyone to our doors. And we see
21 ourselves as a safety net, a place where everyone can go
22 regardless of their ability to pay.

23 Q Does immigration status figure into the Department of
24 Public Health's decision to provide service to any person?

25 A It does not, you know. Diseases don't respect borders.

1 They don't respect laws. We are responsible for the health of
2 everyone who is here regardless of their status.

3 Q Could you turn to tab P-2 of the binder that's in front of
4 you?

5 A All right. Okay.

6 Q Do you recognize this document?

7 A I do.

8 Q Is this document Executive Order Number 8-09, policy
9 concerning access of immigrants to city services?

10 A It is.

11 Q And was it signed by Mike -- Mayor Michael A. Nutter on
12 November 10, 2009?

13 A Yes, it was.

14 Q And are you familiar with this policy?

15 A Yes, I am.

16 Q Does the Department of Public Health comply with this
17 policy?

18 A Yes, it does.

19 Q Does this policy contain any provision that prevents city
20 employees from asking ICE about a person's immigration status?

21 A It does not.

22 Q Would any of the numerous employees that work in your
23 department ever have the need to ask ICE about a person's
24 immigration status?

25 A No, we would never have that need. It's not relevant to

1 us.

2 Q Are you aware of any instances where an employee of the
3 Department of Public Health, in fact, asked ICE about a person's
4 immigration status?

5 A No.

6 Q Does this confidentiality policy -- or I'll refer to it as
7 the confidentiality policy going forward. Does it assist your
8 department in providing services to all Philadelphians,
9 including immigrants?

10 A It does. It communicates to immigrants that they don't
11 need to fear by receiving public health services. And so, that
12 encourages them to come in. And it's very important to public
13 health that we welcome people of all statuses, so that they will
14 get those preventive services both for their health and for the
15 health of the people around them including the entire city.

16 Q If the City did not have this confidentiality policy, how
17 would that impact the use of public health services by
18 Philadelphia's residents including immigrants?

19 A I would be very concerned if the City had a policy or
20 practice in which they were not -- that they were aware of
21 information about immigration status and they were providing
22 that information to others because immigrants would then be
23 afraid to receive those preventive services. That could be
24 harmful to their health if they're not getting preventive
25 services, for example, treatment of early diabetes. So they're

1 likely to come up later to the hospital with a severe
2 complication of diabetes, but even more so for control of
3 infectious diseases. If people are afraid because they may be
4 deported by coming to a clinic and divulging their immigration
5 status, they don't get vaccinated or they don't get treated for
6 the tuberculosis, then there likely to be -- pose a threat not
7 only to their health but also the health of the people around
8 them.

9 Q Do immigrants in Philadelphia currently use the Department
10 of Public Health's services?

11 A Yes, they do, very much.

12 Q And which services do they use?

13 A Well, really, all of our programs impact on immigrants.
14 But, in particular, we see a large number of immigrants in our
15 eight primary care clinics.

16 Q And what types of services are offered at those clinics?

17 A We provide vaccinations for children and adults. We
18 provide prenatal care, family planning services, basic primary
19 care. So if people come in and have aches and pains or other
20 problems, they're seen. We manage their diabetes and their
21 hypertension. We also provide dental care. We do mammography.
22 And I guess that's the -- pretty much the full range of primary
23 care.

24 Q Do you know how many patients on an annual basis are
25 provided care at the city's health clinics?

1 A About 80,000 unique patients. About 320,000 total visits.

2 Q Do you employ any bilingual staff?

3 A We do. We have about 120 of our staff who are bilingual.

4 And because we have so many immigrants in our clinics, we also

5 employ translators. We have 19 full-time and part-time

6 translators, speaking a very wide range of languages, Spanish,

7 Mandarin, Cantonese, Vietnamese, Albanian, to assist our

8 patients who are immigrants.

9 Q Are there any health clinics located in any areas that have
10 large immigrant populations?

11 A There are -- all of our clinics see immigrants, but we have
12 two in particular that are in neighborhoods that have very large
13 immigrant populations. There's Health Center 10 in the north
14 side of the city that serves a population that has many Indian
15 immigrants, Bengali, many from former Soviet states, Russians in
16 particular, also Albanians up there. Then we have Health Center
17 2 on South Broad Street and that services a lot of people from
18 Southeast Asia, Vietnam, Cambodia, also Indonesia. As a matter
19 of fact, we had a recent visit from the Indonesian consulate
20 because so many of their immigrants from that country were here
21 and receiving services at that clinic.

22 Q And how would you describe the demand for services at those
23 clinics?

24 A Demand is very heavy. We have a waiting list for people
25 who have just a non-urgent matter and want a primary care visit.

1 And we are seeking to build a much larger clinic to replace
2 Health Center 10 because we just can't accommodate all the
3 patients we need to see.

4 Q Do immigrants in Philadelphia utilize your department's
5 vaccination services?

6 A They do. We vaccinate them in those clinics, and we -- and
7 they vaccinate in other sites. We also take responsibility for
8 making sure the immunization levels are high everywhere. But we
9 provide those in our eight clinics.

10 Q Do you provide vaccinations to children as well?

11 A Yes.

12 Q And does the city's confidentiality policy help with your
13 vaccination program?

14 A It does. We communicate very clearly that we're going to
15 provide all services that are particular vaccination services,
16 regardless of people's immigration status, to encourage people
17 to come in so they don't get infected and so they don't pose a
18 risk to the people around them.

19 Q And earlier you mentioned tuberculosis. Does the health
20 department have a tuberculosis control program?

21 A It does. We have about 75 patients a year who have active
22 tuberculosis that we manage for their health and to protect the
23 people around them.

24 Q And why is the tuberculosis control program important
25 especially for immigrant communities in Philadelphia?

1 A Well, tuberculosis is far more common in many foreign
2 countries than it is in the United States. About two-thirds of
3 the patients who have tuberculosis in Philadelphia are
4 foreign-born. And it's been shown that if you manage that
5 problem well that you can prevent spread in their community.
6 And if you don't, you'll have increasing rates of tuberculosis
7 and many additional people who will get infected in that
8 community. So we go to great lengths to make sure that the
9 people with -- diagnosed with tuberculosis are effectively
10 treated both for their sake and the people around them.

11 Q And how is tuberculosis treated?

12 A The standard of care which we follow is what we call
13 directly observed therapy. That's where a staff member from the
14 health department actually observes the person taking their
15 medicine, typically three times a week for a period of months,
16 to make absolutely sure that they are taking those medicines
17 until they are cured. That service can be provided in the
18 clinic with the patient coming into the clinic three times a
19 week or it can take place in the patient's home. It's wherever
20 it's convenient. So we devote an enormous amount of staff time
21 to absolutely be sure that those people are fully treated.

22 At the same time, we investigate their contacts, their
23 family members, to see if they also are infected with the
24 organism or have the disease. We make sure that they're treated
25 as well.

1 Q So directly observed therapy requires you to enter people's
2 homes on occasion?

3 A It does and requires a very close personal relationship,
4 and a relationship of trust, or they would not allow us to
5 continue to come into their homes.

6 Q And you said it also requires you to ask questions about
7 family members or other people they've come into contact with?

8 A Yes.

9 Q And how does the City's confidentiality policy help the
10 health department gain that trust to ask those questions and
11 enter into homes?

12 A Yeah. We make it very clear that immigration status is not
13 going to determine anything that we do, that they -- we want to
14 make sure that they're healthy regardless of immigration status.
15 If they felt that by us learning that they were undocumented
16 that they might offer some consequences of that, they would hide
17 from us, and they would not get the rest of their treatment.
18 They would probably get sicker and pose a risk to those around
19 them.

20 Q Are you aware of any situations where immigrant communities
21 raise concerns about whether they would be treated differently
22 because of their status as immigrants with the health
23 department?

24 A I am. There was a meeting that took place at the municipal
25 services building a month or two after the election where a

1 number of immigrant groups had requested a meeting with the city
2 administration. I did not attend that meeting, but my chief of
3 staff did attend on my behalf and said that people were very,
4 very concerned about the risks of the new federal
5 administration's policy. And there was at least one group that
6 specifically mentioned that people's fear of deportation under
7 the policy might mean that parents would not be taking their
8 children to the clinics to get vaccination. Even if those
9 children themselves were legal residents, if the parents
10 themselves are undocumented, then they would be afraid to bring
11 their children to the clinic, so the children would not be
12 vaccinated. And again, that would be risk to them as well as
13 their larger community.

14 Q Yeah. And is that a concern --

15 MR. GARG: Objection, Your Honor. I'm sorry. I
16 didn't want to interrupt the witness' question. I believe that
17 was all hearsay testimony, Your Honor.

18 THE COURT: Well, it was. But, you know, you don't --
19 don't be afraid of interrupting if you have an objection. Well,
20 it is hearsay.

21 MR. PRATT: Your Honor, for the record, I would just
22 say, you know, hearsay is allowed at injunction hearings because
23 of the exigent nature of the proceedings.

24 THE COURT: Well, I'm not --

25 MR. PRATT: There's Third Circuit case law on that

1 point.

2 THE COURT: I'm not sure that's a Third Circuit rule.
3 I'd be interested in hearsay in a Third Circuit case that's held
4 that. But let me -- who was your deputy that was at the
5 meeting?

6 THE WITNESS: My chief of staff, Jane Baker.

7 THE COURT: Jane Baker?

8 THE WITNESS: Yes.

9 THE COURT: Okay. Well, do you want leave to call
10 her? Is she available to come in any time today or tomorrow?

11 MR. PRATT: I don't --

12 THE COURT: I mean if it's important, I would rather
13 have direct testimony to tell you the truth.

14 MR. PRATT: We can forego it for today, Your Honor.

15 THE COURT: All right. Well, do you have any other
16 knowledge of this -- the impact of the federal regulations on
17 your -- on the operations of your department pertaining to
18 immigrants?

19 THE WITNESS: I would just say, in general, it's the
20 practice of public health to welcome everyone, regardless of
21 immigration status and to convince people that they should be
22 trusting us.

23 THE COURT: Was that your practice in New York City?

24 THE WITNESS: Absolutely. Yes. As a matter of fact,
25 there's a -- the poster in New York City that warns people about

1 tuberculosis has very much right there on the poster that we
2 don't ask about immigration status because we want to
3 communicate that right up front.

4 THE COURT: Does Philadelphia have such a practice on
5 posters?

6 THE WITNESS: We have a practice. We don't have a
7 poster like that.

8 THE COURT: You don't.

9 BY MR. PRATT:

10 Q Is there a website, Dr. Farley, that contains something to
11 that effect?

12 A There is a website at the health department that does say
13 that we don't ask about immigration status. I believe it's on
14 our vaccination page.

15 THE COURT: All right. Why do you -- and well, just
16 from your own knowledge, without relying on hearsay, why do you
17 think that's relevant and important for the discharge of your
18 duties?

19 THE WITNESS: Well, it's important for us to be able
20 to provide services to people because they're preventive in
21 nature, both for their health and the health of the community.
22 And there's -- it's logical to assume that if people are afraid
23 that by divulging their status to us they're going to suffer the
24 consequences that are adverse, like deportation, that people are
25 going to hide from us and not participate in those services.

1 THE COURT: You know that of your own knowledge?

2 THE WITNESS: Yes.

3 THE COURT: All right. Next question. I'm going to
4 strike his answer about what he was told from Jane Baker. Go
5 ahead.

6 BY MR. PRATT:

7 Q Does the Department of Public Health cooperate with the
8 federal government on any initiatives?

9 A Yes, it does.

10 Q Could you give a few examples?

11 A Yes. We work very closely with the Centers for Disease
12 Control and Prevention on a wide range of communicable disease
13 control programs. They provide funding to us in the form of
14 cooperative agreements. We work with them based on their
15 protocols. So that would include tuberculosis control, HIV/AIDS
16 prevention, prevention of other sexually transmitted diseases,
17 vaccine preventable disease programs. It would include chronic
18 disease programs.

19 We also work with the Health Resources and Services
20 Administration which is a branch of the Department of Health and
21 Human Services.

22 THE COURT: What's that called?

23 THE WITNESS: The Health Resources and Services
24 Administration.

25 THE COURT: Is that part of HHS?

Direct Examination - Farley

Cross-Examination - Farley

1 THE WITNESS: It's part of HHS. They provide funding
2 to us for HIV treatment as well as maternal and child health.
3 And so, that's actually a large amount of funding for treatment
4 of people with HIV infection for their health and also to
5 prevent them from spreading the infection in the community.

6 MR. PRATT: Your Honor, those are all the questions I
7 have for now unless you have additional ones.

8 THE COURT: No, I don't have any.

9 Well, let's have Mr. Garg cross-examine.

10 MR. GARG: Yes, Your Honor, briefly.

11 CROSS-EXAMINATION

12 BY MR. GARG:

13 Q Good afternoon, Dr. Farley. My name is Arjun Garg. I'm
14 with the Department of Justice. Are you aware that this case is
15 about funding under the federal Byrne JAG Grant Program?

16 A I'm aware of that, but I don't know anything beyond that.

17 Q Sure. I understand that. Do you know, under the city of
18 Philadelphia's fiscal year 2017 Byrne JAG funding application,
19 would the Department of Public Health receive Byrne JAG funds?

20 A We don't receive funds from them. I imagine that we
21 wouldn't be in the future.

22 Q Has any city authority reached out to the Department of
23 Public Health to ensure compliance with any Byrne JAG grant
24 conditions to your awareness?

25 A No.

Cross-Examination - Farley/

Direct Examination - Gladstein

MR. GARG: Thank you. Nothing further.

THE COURT: All right. Redirect.

MR. PRATT: Nothing further, Your Honor.

THE COURT: Okay.

All right. Thank you very much, Dr. Farley.

THE WITNESS: Thank you.

THE COURT: Next witness.

MR. PRATT: Next, we'd like to call Eva Gladstein.

THE COURT: Okay. All right. Well, once again, she submitted a declaration. So --

MR. PRATT: Yes.

THE COURT: Someone is going to get her I assume? Yeah.

(Pause)

DEPUTY CLERK: Please raise your right hand.

(EVA GLADSTEIN, Witness, is Sworn)

DEPUTY CLERK: Okay. Please state your full name and spell your last for the record.

THE WITNESS: Eva Gladstein, G-L-A-D-S-T-E-I-N.

THE COURT: All right. Have a seat. Keep your -- speak right in the microphone. Keep your voice up, please.

THE WITNESS: Yes.

DIRECT EXAMINATION

BY MR. PRATT:

Q Good afternoon, Ms. Gladstein. Where are you currently

1 employed?

2 A I'm employed with the City of Philadelphia in the managing
3 director's office.

4 Q And what is your current title?

5 A Deputy managing director for Health and Human Services.

6 Q And could you describe your educational background?

7 A I have a bachelor's in urban studies from Temple
8 University.

9 Q And could you give the Court an overview of your
10 professional career?

11 A Yes. I spent about 25 years in the non-profit sector in
12 the City of Philadelphia, primarily doing community organizing,
13 housing policy, and housing service provision. I entered city
14 government in September 1998. And since that time, I've had
15 five or six different positions in the City of Philadelphia that
16 range from human service to community development positions.

17 Q And in any of those prior positions have you had experience
18 working with immigrant communities in Philadelphia?

19 A Yes, I have.

20 Q And what are your duties as deputy managing director of
21 Health and Human Services?

22 A I oversee and coordinate the services of five city
23 departments.

24 Q And could you identify those departments and what they do?

25 A Yes. The Department of Human Services, which is the City's

1 child welfare agency, the Department of Public Health, the
2 Department of Behavioral Health and Intellectual Disability
3 Services, the Office of Homeless Services, and the Office of
4 Community Empowerment and Opportunity, which is the City's
5 anti-poverty agency.

6 Q And do you communicate with those departments on a regular
7 basis?

8 A Yes, I do.

9 Q And how would you describe the overall purpose of having a
10 Health and Human Services enterprise in city government?

11 A Well, we are responsible for providing immediate and direct
12 services to the city's most vulnerable population and our goal
13 is to try to make sure that people are healthy and stable and to
14 ensure their well-being.

15 Q And do immigrant residents in Philadelphia utilize the
16 services of Health and Human Services?

17 A Yes, they do.

18 Q Could you turn to tab P-2 in the binder that's in front of
19 you?

20 A Yes.

21 Q Do you recognize this document?

22 A Yes, I do.

23 Q Is it Executive Order 8-09, policy concerning access of
24 immigrants to city services?

25 A Yes, it is.

1 Q And was it signed by Mayor Michael Nutter on November 10,
2 2009?

3 A I see his signature and date, so yes.

4 Q And do the agencies and departments that you oversee comply
5 with this policy?

6 A Yes, they do.

7 Q Does this policy contain any provision that prevents city
8 employees from asking ICE about a person's immigration status?

9 A No, it does not.

10 Q Would any of the employees that fall under Health and Human
11 Services, including all five departments, ever have the need to
12 ask ICE about a person's immigration status?

13 A To date, we have not had the need to do that.

14 Q Are you aware of any instances where a city employee, in
15 fact, contacted ICE to ask about a person's immigration status?

16 A No, I am not.

17 Q Does this policy, which I'll refer to as the
18 confidentiality policy, aid Health and Human Services in
19 providing services to all Philadelphians including immigrants?

20 A Yes, it does. It removes barriers that would otherwise
21 impede people to access the services.

22 Q Can Philadelphia residents utilize the services and
23 programs offered by your department without regard to their
24 immigration status?

25 A Yes, they can.

1 Q And do you know whether immigrant communities in
2 Philadelphia, in fact, use services such as services offered by
3 the Department of Behavioral Health?

4 A Yes. We're aware of immigrant populations using those
5 services. In fact, we do specific outreach to different
6 communities and have language and cultural capacity, as
7 necessary, to serve those communities.

8 Q And what are some of the services that they use?

9 A In the Department of Behavioral Health and Intellectual
10 Disability Services, they provide treatment services, education
11 and outreach around mental health, around substance use
12 disorder, which is a particularly big issue right now with the
13 opioid crisis, and also early intervention services, where they
14 help assess and provide services to young children age 0 to 2
15 who are not meeting developmental milestones to help them reach
16 those milestones so they're ready to begin school.

17 Q And how do you think the City's confidentiality policy
18 helps the Department of Behavioral Health offer those services
19 to the immigrant communities?

20 A Again, many of these services or issues or stigmatized and
21 it's difficult for people, sometimes parents to accept that
22 their child might need those services or a family member to
23 accept that they might need those services. And so, removing
24 any barriers is really important to engage people and have them
25 come in for treatment or support.

1 Q Does the Department of Human Services interact with
2 immigrant communities at all?

3 A Yes, it does.

4 Q And could you describe how that happens?

5 A Well, one of their primary services is that they operate a
6 hotline, a child hotline. And they receive reports of suspected
7 abuse or neglect of children. And then it is their
8 responsibility to investigate those cases to see whether they're
9 founded or unfounded, and if founded, to provide supports to
10 that child and that family. In doing that investigation, it's
11 very important for them. They have to talk to family members
12 and have a trusting relationship with the family. Could be
13 other supports in the community, less direct kin, and it's
14 important for them to be able to have that relationship to
15 conduct an appropriate investigation.

16 Q And if the City did not have its confidentiality policy,
17 how do you think the Department of Human Services' interactions
18 with immigrant communities would be impacted?

19 A I would expect that we would have less participation from
20 those communities. And then, in fact, it would have a chilling
21 effect on our ability to buy those services.

22 Q Do immigrant communities in Philadelphia utilize services
23 offered by the Office of Homeless Services?

24 A Yes, they do.

25 Q And what are some of the services that are used?

1 A Again, we provide prevention services to help prevent
2 homelessness. We also provide emergency shelter. We provide --
3 we provide transitional housing. Among those services are
4 domestic -- a domestic violence hotline and domestic violence
5 shelters and transitional housing.

6 Q And how does the -- how would those services be impacted or
7 the utilization of those services be impacted if the city did
8 not have its confidentiality policy?

9 A Again, it's important to remove barriers so that people
10 feel comfortable accessing those services. They might not be
11 safe in their current housing situation either because of the
12 housing condition or because of, potentially, some familial
13 violence. So it's important for them to be able to contact us
14 and have a trusted relationship and then access those services.

15 Q Are there any situation think of where your departments and
16 agencies work together with the federal government?

17 A Yes. We've had a number of instances. I can give a few
18 examples. One was during recent events that required national
19 security including the DNC Convention. Before that, the visit
20 of the Pope. Our Office of Homeless Services had to cooperate
21 with and through other city departments with regard to outreach
22 to people who are living on the street and et cetera.
23 Certainly, our Department of Public Health has cooperated around
24 public issues, including probably most recently the Zika virus
25 and, hopefully, upcoming opioid crisis.

Direct Examination - Gladstein/

Cross-Examination - Gladstein

1 Q And could you turn to tab P-9 in the binder in front of
2 you?

3 A Yes.

4 Q Do you recognize this document?

5 A Yes, I do.

6 Q Is it your declaration?

7 A Yes.

8 Q And is that your signature on page 4?

9 A Yes, it is.

10 Q And is this declaration still accurate to the best of your
11 knowledge?

12 A Yes, it is.

13 MR. PRATT: Your Honor, I have no further questions
14 unless you have something additional.

15 THE COURT: Mr. Garg, any questions?

16 MR. GARG: Yes, I do.

17 CROSS-EXAMINATION

18 BY MR. GARG:

19 Q Good afternoon, Ms. Gladstein. My name is Arjun Garg with
20 the U.S. Department of Justice.

21 A Good afternoon.

22 Q I believe you testified just now -- you are looking at
23 Exhibit P2, which are welcome to flip to. It's Executive Order
24 8-09. And I think you are asked about section 2 of that, policy
25 in P2, Executive Order Number 8-09.

1 A Yes.

2 Q And I think you testified it's your understanding that this
3 executive order does not prohibit a city employee from
4 requesting immigration status from ICE?

5 A Yes.

6 Q Did you have that understanding prior to today?

7 A Yes, I did.

8 Q Now turning to your declaration, you just adopted. It's at
9 P9. Looking at paragraph 5. It says -- I'm just reading the
10 text.

11 "For many years, it has been the practice and policy
12 of the City to refrain from asking for immigration
13 status information unless doing so is necessary to
14 determine benefits eligibility or otherwise required
15 by federal or state law."

16 I just wanted to ask you can you describe any examples
17 where asking for immigration status information is required by
18 federal or state law?

19 A To my knowledge, I'm not aware of any within our agencies,
20 the agencies that I oversee.

21 MR. GARG: Nothing further. Thank you very much.

22 THE COURT: Redirect.

23 MR. PRATT: Nothing further, Your Honor. But we would
24 like to move Exhibits P1 through P9 into evidence.

25 THE COURT: Any objection?

1 MR. GARG: No objection, Your Honor.

2 THE COURT: They'll all be admitted.

3 (Plaintiff's Exhibits P-1 through P-9 admitted.)

4 THE COURT: Okay. All right. Any other evidence, Mr.
5 Tulante?

6 You may step down. Thank you.

7 THE WITNESS: Thank you.

8 THE COURT: But you may stay in the courtroom.

9 MR. TULANTE: With that, the --

10 THE COURT: I'm sorry?

11 MR. TULANTE: With that, the City rests for purposes
12 of this hearing.

13 THE COURT: Okay. All right. So your exhibit have
14 been moved.

15 Any evidence by the Defendant?

16 MR. GARG: Your Honor, we have nothing further to
17 offer.

18 THE COURT: All right. Well, what -- tell me. What
19 should I do about the Brown declaration as to which certain
20 paragraphs of been disputed?

21 MR. GARG: Your Honor, well, we think the Brown
22 declaration is in the record. I think, personally, I need to go
23 back through the transcript to see exactly what they've disputed
24 here today. You know, we welcome Your Honor weighing those as
25 you see fit to the extent that you see disputes there.

1 THE COURT: Any response?

2 MR. TULANTE: Your Honor, that's fair. I mean,
3 obviously, we --

4 THE COURT: All right.

5 MR. TULANTE: -- through the testimony by the police
6 commissioner.

7 THE COURT: Now all right. Well, we all know we have
8 the argument next Thursday. Now will your acting assistant
9 attorney general be able to attend as you had requested?

10 MR. GARG: I think that is his goal. I don't have 100
11 percent confirmation as I stand here now.

12 THE COURT: All right. Well, you're always welcome.

13 MR. GARG: I appreciate that, Your Honor.

14 THE COURT: Yeah. All right. Now I would like to
15 have findings of fact -- proposed findings of fact on one issue
16 in this case and that's the 1373 issue. It's been briefed by
17 both of you. I'm not asking for conclusions of law because it's
18 been briefed. But to the extent that either of you believe
19 there are any factual issues, I would like to have you submit
20 them either based on facts that are in the exhibits that were
21 attached that have not been disputed or facts that were brought
22 up in the testimony today. I'm not suggesting that new
23 affidavits would be filed. That's not -- I don't think that's
24 appropriate. I'm asking for -- the proposed findings be based
25 on what is already in the record with one exception. And that

1 is the testimony is that the City's response to the DOJ letter
2 is due tomorrow.

3 Mr. Tulante, can you tell -- is the City going to
4 file -- submit a response?

5 MR. TULANTE: That is correct. It's our intention to
6 file a response.

7 THE COURT: It's what?

8 MR. TULANTE: It is our intention to file a response.

9 THE COURT: All right. Well, I think that ought to be
10 submitted too as part of the record of this case if there is no
11 objection by the Government.

12 MR. GARG: No objection, Your Honor.

13 THE COURT: All right. And I think -- and I don't
14 know what it's going to say. And I don't want to know right
15 now, you know, because it's not due until tomorrow. But I think
16 that you ought to submit it. And it could be submitted by
17 letter if you want to --

18 MR. TULANTE: We'll provide a courtesy copy to the
19 Court.

20 THE COURT: But I think it should be docketed --

21 MR. TULANTE: Yeah, okay.

22 THE COURT: -- and obviously given to Mr. Garg. But
23 more than that, I think the -- both parties should have the
24 opportunity to submit proposed findings on the 1373 issue. Now
25 I say that for a couple reasons. One is that the Chicago

1 decision, which I understand is on appeal, the judge did not
2 grant a preliminary injunction on the 1373 issue. He did issue
3 a nationwide injunction on the other two issues, and I -- we've
4 previously discussed. I think at least the City intends that I
5 should address those issues in this case because Philadelphia
6 has some facts that are different from Chicago and it's my
7 intention to do that. But I don't need proposed findings of
8 fact on that issue. But I would like them on the 1373 issue,
9 and I'd like them to be in numbered paragraphs. I'm not going
10 to require you to get the transcript and make citations to the
11 pages. But if you're relying on exhibits, I think you should
12 identify the exhibit number either today or attached to your
13 brief or if it's a matter of public record, that it would be
14 admissible under the Federal Rules of Evidence without
15 testimony. That would be appropriate as well.

16 But I'd like it limited to 10 pages, because I --
17 there is a limited amount of time you have between now and next
18 Wednesday, when I would need it, but if you can submit it by
19 noon on next Wednesday, so we'll have that afternoon to review
20 it, and it may come up at the argument. So we'll have the
21 argument on Thursday morning. And I think I had indicated
22 10:00, but I would like to move it up to 9:30 if that's all
23 right with everybody and I'll have the morning to devote to
24 this. And I may submit some questions to counsel before that
25 I'm -- that I'd like you to be particularly prepared to address

1 on some of the legal issues.

2 And so, we'll adjourn now. And I want to thank you
3 for all your attention to presenting this efficiently and -- on
4 both sides and being so well-prepared as you were.

5 Okay. Anything further from counsel?

6 MR. TULANTE: Your Honor, one second. Your Honor,
7 given the absence of a formal transcript, you know, we've taken
8 notes obviously.

9 THE COURT: Right.

10 MR. TULANTE: Can we make reference to the testimony
11 today?

12 THE COURT: Yeah, sure.

13 MR. TULANTE: Okay. I just want to --

14 THE COURT: You don't need to order the transcript for
15 next Thursday.

16 MR. TULANTE: Okay.

17 THE COURT: Yeah. We've been taking notes, and a lot
18 of it is, you know, just explanatory of what's already in the
19 exhibits.

20 MR. TULANTE: And in particular, given that
21 Commissioner Ross didn't submit a declaration, once again, it's
22 just --

23 THE COURT: Yeah. No, I don't need the transcript.
24 But I think you should -- your findings of fact should rely on
25 facts that are in evidence.

MR. TULANTE: Absolutely. Absolutely.

THE COURT: And -- or facts that are subject to
judicial notice under the Rules of Evidence, okay?

MR. TULANTE: All right.

THE COURT: All right. Thank you very much.

MR. TULANTE: Thank you, Your Honor.

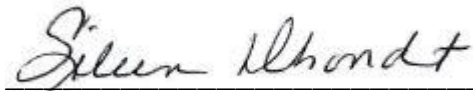
THE COURT: Court is adjourned. I'll see you next
Thursday, 9:30.

MR. GARG: Thank you.

(Proceedings adjourned at 1:35 p.m.)

CERTIFICATION

I, EILEEN DHONDT, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

A handwritten signature in cursive script, reading "Eileen Dhondt", is written over a horizontal line.

EILEEN DHONDT, CET 807
Aequum Legal Transcription

Dated: October 27, 2017